

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



39-H 214  
APPENDIX TO THE BRIEFS

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COLUMBIA BROADCASTING SYSTEM, INC., )  
Petitioner, )  
v. ) No. 24,655  
FEDERAL COMMUNICATIONS COMMISSION )  
and UNITED STATES OF AMERICA, )  
Respondents, )  
DEMOCRATIC NATIONAL COMMITTEE, )  
REPUBLICAN NATIONAL COMMITTEE, )  
Intervenors. )

DEMOCRATIC NATIONAL COMMITTEE, )  
Petitioner, )  
v. ) No. 24,659  
FEDERAL COMMUNICATIONS COMMISSION )  
and UNITED STATES OF AMERICA, )  
Respondents, )  
REPUBLICAN NATIONAL COMMITTEE, )  
Intervenor. )

ON PETITIONS FOR REVIEW OF ORDERS OF THE  
FEDERAL COMMUNICATIONS COMMISSION

United States Court of Appeals  
for the District of Columbia Circuit

FILED JAN 14 1971

*Nathan J. Paulson*  
CLERK





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Respondents, )

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## APPENDIX TO THE BRIEFS



BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C.

PETITION OF THE REPUBLICAN NATIONAL  
COMMITTEE FOR RELIEF AGAINST CBS

**Counsel:**

W. Theodore Pierson.  
Pierson, Ball & Dowd  
1000 Ring Building  
Washington, D.C.

July 13, 1970

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

PETITION OF THE REPUBLICAN NATIONAL  
COMMITTEE FOR RELIEF AGAINST CBS

This Petition is filed on behalf of the Republican National Committee (RNC) to obtain relief from the failure of the Columbia Broadcasting System (CBS) to grant the request <sup>1/</sup> of RNC for time over the network to respond to the CBS network appearance on July 7, 1970 of Lawrence F. O'Brien on behalf of the Democratic National Committee (DNC).

We have received no reply to our requests for time, but public statements by the President of CBS imply a negative response will be forthcoming if, indeed, any reply is forthcoming.

As a preliminary matter we first wish to emphasize the need for expeditious action on this matter. If the RNC is to be given a meaningful opportunity to respond to the broad issues raised by the DNC program of July 7, it must be proximate in time else the issues will dim in the minds of the public.

We will briefly state the background of events which gave rise to this controversy and then explicate our position with respect to the issues presented.

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<sup>1/</sup> Attached are two telegraphic messages by RNC to CBS dated July 3, 1970 and July 8, 1970, to which CBS has not responded.



BACKGROUND

On May 19, 1970 the Democratic National Committee filed a Request for Declaratory Ruling requesting the Federal Communications Commission to rule that "A broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as DNC, for the solicitation of funds and for comment on public issues". The DNC Request, which is still pending before the Commission, was opposed by CBS in Comments filed on June 22, 1970, on grounds, among others, that it would violate the Communications Act and repudiate the Fairness Doctrine.

Simultaneously, on June 22, 1970, CBS by telegram <sup>2/</sup> offered DNC 25 minutes of free time on the CBS television and radio networks to be used at 10 p.m., EDT, on July 7, 1970, for "presentation of the Committee's views" coupled with notice that it would accept paid announcements from DNC for fund-raising purposes. CBS further notified DNC that it would from time to time during the course of the year make available additional free time. Thus the offer was not specifically directed to balancing the discussion of controversial public issues which might have been raised by President Nixon during his broadcast appearances, as the CBS-message-to-O'Brien seemed to imply. Rather, the offer permitted DNC to use the time for any purpose, including mere partisan advocacy and party propaganda.

On July 7, 1970 Democratic Party Chairman Lawrence F. O'Brien broadcast a 25-minute program in response to the CBS offer of free time. Mr. O'Brien's speech was not devoted to giving the other side of issues discussed by President

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<sup>2/</sup> Attached is a CBS press release dated June 22, 1970, which contains the telegraphic message. (Exhibit 2).

Nixon in his recent broadcasts.<sup>3/</sup> On the whole, it was a political attack on the President and his party, coupled with a closing commercial that funds be contributed to support DNC's goal of ousting Republicans from office. It directly raised the fresh issue not specifically treated by any Presidential speech: which political party should hold power.

The six presidential addresses carried by CBS between 11/3/69 and 6/30/70 did not address themselves to the issue of "which party?". They did not attack the Democratic Party or the Democratically-controlled Congress. Rather, they dealt with the State of the Union, viz: the President's analysis of the problems the programs he had adopted to meet the problems and his explanation of actions he had taken or would take. He did not mention the Democratic Party. Rather, in the April 30th speech the President made clear that the Presidential actions were taken in spite of the possible adverse effects upon his political fortune or those of his party. In none of these did he deal with the purely partisan issue as to which party should hold power. His purpose, confirmed by his performance, was to report, as Chief Executive, on the state of things in the nation, not to boast of the virtues of the Grand Old Party.

#### DISCUSSION

Since CBS has exercised its journalistic freedom to permit DNC to propagandize on the broad issue as to which major party should hold power, CBS has the ensuing duty under the Fairness Doctrine to seek out an appropriate spokesman to respond. We assume that CBS could not hold in good

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<sup>3/</sup> Script attached as Appendix A. It is pertinent in this regard that President Nixon's most recent broadcast appearance had been his news conference the week before with network anchormen limited by agreement solely to foreign affairs, including the Viet Nam-Cambodia situation. Mr. O'Brien's speech devoted approximately 2 of his 25 minutes to this issue.



faith that RNC is an inappropriate counter-spokesman or that someone else is a more appropriate spokesman on the broad issue as to whether Republicans or Democrats should hold power. In any event CBS needs to search no further. RNC is eager and ready. This is the rather unique case where the appropriate respondent is so conclusively and exclusively elected that for CBS to search further for another would constitute behavior so outrageous and biased as to utterly negate its qualifications as a "public trustee". It is beyond doubt that the Commission has the power "to conclude that the objective of adequate presentation of all sides may be best served by allowing those most closely affected to make the response." Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367, 379.

While the national committees of the Democratic and Republican parties are undoubtedly appropriate spokesmen to argue the issue of which of the major parties should be in power and to "sell" prospective contributors, they are not necessarily appropriate spokesmen to discuss specific political, economic and social issues -- the "gut issues". National Committees are not policy spokesmen or policy-setting organizations. Their primary functions are to hold conventions, raise money and to get the candidates of their party elected regardless of the candidate's position on particular issues. The Democratic party, qua party, is not monolithic on policy. Its members vary widely regarding practically

any given issue. <sup>4/</sup> It is also well known that disagreement with any President on particular issues is not the peculiar province of the opposition party -- such disagreement oftentimes comes from Congressional members of the President's own party. <sup>5/</sup>

We refer to these circumstances for several reasons. There are always appropriate spokesmen available from either within or without the President's party to express views contrary to those expressed by the President. Indeed, a serious question is raised whether CBS can assign to DNC the role of "appropriate spokesman" of the "loyal opposition" under all circumstances. See Golden West Broadcasters, 8 FCC 2d 987, 10 RR 2d 523 (1967). Where a national committee is permitted to express views, these views will be inherently partisan in nature and, out of practical necessity, issue-dodging to a high degree since the national committee itself does not

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<sup>4/</sup> For instance, on the Cooper-Church Amendment (Amendment to Foreign Military Sales Act HR 15628), 42 Democratic Senators voted in favor and 11 against the Amendment. (Congressional Quarterly, July 3, 1970, at 1713). In the House of Representatives on the same subject (motion to tally, roll call - 208) 99 Democrats voted one way and 121 Democrats voted the other way. (Washington Post, July 10, 1970, at A-11). A study by Congressional Quarterly indicates that in 1969 Democrats in Congress divided along North-South lines on 36% of all roll call votes. Such split, Congressional Quarterly tabulated, occurred most frequently in the very sensitive areas of government spending and taxes. (Congressional Quarterly Almanac, 1969, at 1071.) Similarly, on the Voting Rights Act (HR 4249) the vote on one crucial acceptance of the Senate amendments (H. Res. 914) saw the Democrats in one House split 172-56. (Congressional Quarterly, June 26, 1970, at 1666.) We are citing these statistics, not as a criticism of the Democratic party, not in any partisan sense, since similar splits have occurred on these and other issues within the Republican party. These facts, however, strongly indicate that a party qua party is not the vehicle for the discussion of issues.

<sup>5/</sup> Thus, for instance, one co-sponsor of the Cooper-Church Amendment is Senator Sherman Cooper, Republican of Kentucky. The co-sponsor of the McGovern-Hatfield Amendment is Senator Mark Hatfield, Republican of Oregon.

establish, control or represent the views of its members on the issues of the day. It is solely interested in getting back in power -- a goal it must promote no matter how much its members and candidates are divided on the "gut issues" facing the nation.

We do not question the right of any national party to broadcast its partisan propaganda. We merely contend that, since all views expressed by DNC were, and out of practical necessity must almost always be, directed primarily to the "which party?" issue, it is an event that should only be countered by national committees seeking a contrary result.

We make no claim here that the Commission should interfere with the CBS's journalistic decision to grant time to the DNC to be used as that party sees fit for propaganda and fund-raising purposes. It deserves notice, however, that on the same day that CBS announced the grant of time, it self-righteously condemned the very type of action it took as being contrary to the standards of journalism it so frequently vaunts.

In a lengthy document filed at the FCC on June 22, 1970,<sup>6/</sup> the day it notified DNC of the grant of time and in response to a request of the DNC for a declaratory ruling concerning access to time on broadcast stations, CBS declared as follows:

"CBS has long maintained policies which in general provide that broadcasts dealing with current controversial issues be produced under the supervision and control of CBS News or a CBS Owned Station. Only by lodging these responsibilities

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<sup>6/</sup> Commission Reference 8330, C5-1344.

with our own personnel can we effectively insure that objectivity and fairness will actually be achieved.... CBS has concluded that as a licensee in a medium with a finite amount of time to provide news, information and entertainment, we best serve the public by presenting issues and viewpoints within a balanced program schedule utilizing newsworthiness as the sole criterion." Id. at 3, 4. footnote omitted.

Then, after stating that the appearances of outsiders on its programs "are not permitted to become the instrument of partisan advocacy" (Id. at 7), CBS endorsed the following quotation from The Report of the Twentieth Century Commission on Campaign Costs in the Electronic Era as aptly describing "the dangers in the political sphere of substituting partisan program control for professional news responsibility" and as applicable to a political party as well as to a political candidate:

"Advances in broadcasting technology have made it possible to present a candidate in the best possible light, with all inept answers to hard questions edited out of the tape, with false starts and all uncertainties and human failings eliminated, all warts and blemishes removed, a single smooth image alone remaining. It is no criticism of television or radio to say that some day it may be possible to offer a wholly plausible and wholly false impression of a candidate. Broadcasting would become an impenetrable shield for a candidate, would not open a window on him through which the public could see him clearly." (Id. at 7. footnote omitted.

In the O'Brien appearance on July 7, 1970, CBS allowed "partisan program control" which permitted the program "to become the instrument of partisan advocacy" with the consequent closing of the window on DNC through which the public otherwise could see it clearly.<sup>7/</sup>

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<sup>7/</sup> In contrast, the June 30, 1970 appearance of the President was live and unedited, the first of such in history.

One could regard it as merely farcical that CBS was thus hoist with its own petard were it not for the fact that such caprice was practiced by persons whose responsible performance is so vital to our democratic system. We agree with what CBS told the Commission on June 22, 1970 and not with what it offered to Mr. O'Brien on that day. Because we believe in journalistic freedom, we do not ask the Commission to recall CBS's gratuity to DNC. Let CBS sit where it is hoist. We do insist that, having opened its programs for "partisan control" to become instruments of partisan advocacy, we, as DNC's major partisan antagonist must equally share this privileged exception to CBS's professed articles of journalistic faith. This is elemental fairness. Only a CBS bias against the Republican Party could explain a rejection of our request.<sup>8/</sup>

We have no quarrel with the principle that presidential discussions of controversial issues fall within the Fairness Doctrine since we believe that, if there is another side, to know it is the public's right. As the

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<sup>8/</sup> To suspect CBS of such biased conduct would put down as sheer sophistry the following moving paragraph taken from the testimony of Dr. Frank Stanton, President of CBS in testimony before a Congressional Subcommittee:

"As for the possible biases of broadcasters, I have no doubt that, like all citizens, they have their loyalties and preferences as individuals. But to indulge these personal attitudes in the conduct of the public service function of their stations would be a very risky business. A broadcasting franchise is a very precious thing. Nobody knows this better than a broadcaster. That the general devotion of the American people to the principles of fair play apply to the way broadcasters exercise their franchise has been made amply clear. No broadcaster worth his salt would risk amassing a record of biased treatment of candidates or parties." Hearings Before The Special Subcommittee On Investigations Of the House Committee on Interstate and Foreign Commerce, 90th Cong., 2d Sess., Panel Discussion On The Fairness Doctrine and Related Subjects, ser. 90-33 (1968).

Red Lion case emphasized, the underlying justification for the Fairness Doctrine "is the First Amendment goal of producing an informed public".<sup>9/</sup> In this regard the Commission has recognized the extraordinary value of presidential reports to the public.<sup>10/</sup> However, it is readily apparent that, if every broadcast report to his constituents by an incumbent president, governor, mayor, senator or congressman is to be subjected to "partisan" rather than to an "issue" oriented response by the opposite party without granting the incumbent's own party a right to reply, this will tend to have an inhibiting effect upon the making of such reports by public officeholders.

Knowing that a sincere serious report<sup>11/</sup> on the state of things in the city, district, state or nation will evoke almost as a matter of right, a purely partisan response from the incumbent's opposition party to "throw the rascal out", without more, leaves the incumbent with two practical options: (1) to convert his report from an effort to inform and explain the state of things in his polity to a purely partisan propagandizing effort, or (2) to give no report at all. In either case the profound and critical importance of an officeholder communicating, in a serious and non-propagandizing mode, wi

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<sup>9/</sup> Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 393 (1969).

<sup>10/</sup> For example, the Commission has held that under such circumstances, such presidential reports are so important to the public as to even over-ride so-called "equal time" considerations. Columbia Broadcasting System \_\_\_\_\_, FCC \_\_\_\_\_, 14 RR 720 (1956); Republican National Committee, \_\_\_\_\_, FCC \_\_\_\_\_, 3 RR2d 647 (1964), review denied by equally divided Court of Appeals, cert. denied sub nom. Goldwater v. Federal Communications Commission, 379 US 893.

<sup>11/</sup> It is open to anyone to doubt the sincerity and purpose of the non-partisan reports of officeholders to constituents, just as it is rather hard to square the CBS contradictions of June 22, 1970 with its vaunted responsibility and sincerity as another type of public servant. But these perplexities do not justify, and cannot justify, the conclusion that all acts of either class of fiduciary are devious and insincere. Such despair is wholly unwarranted.

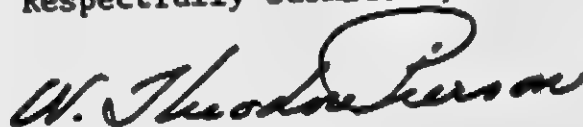
his constituents will be a thing of the past which, by comparison, will dwarf to virtual nothingness the "credibility gaps" of which much has been made in the recent past. If, on the other hand, the officeholder is assured that the partisan and propagandizing efforts of the opposing party can be met in kind by his own party, then he can devote his reports to the vital purpose of informing on the state of things.

It is simply not in the public interest for a broadcaster to deliberately pursue a course which will tend inevitably either to block an elected leader from communicating via broadcasting with his constituents or to turn those communications into unadulterated partisan propagandizing pieces.

#### CONCLUSION

As we have heretofore indicated, CBS has allowed DNC an opportunity, as a party-advocate-and-propagandist, to directly raise the broad issue as to which of the two major political parties should be in power, irrespective of the internal divisions on each of the "gut-issues". Elementary fairness demands that the RNC be permitted to express a contrary view. We therefore respectfully request that the Commission at its earliest convenience make its views known to CBS that their failure to afford forthwith RNC such an opportunity would constitute a violation of the Fairness Doctrine and CBS's obligations as a licensee of broadcast stations.

Respectfully submitted,



W. Theodore Pierson  
PIERSON, BALL & DOWD  
1000 Ring Building  
Washington, D.C. 20036  
Attorneys for

Republican National Committee

July 13, 1970



CERTIFICATE OF SERVICE

I, Joseph F. Miller, do hereby certify that I have this 13th day of July, 1970, delivered by hand copies of the foregoing "Petition of the Republican National Committee for Relief Against CBS" to:

Joseph DeFranco, Esq.  
2020 M Street, N. W.  
Washington, D. C.  
Counsel for the Columbia Broadcasting System, Inc.

Roger J. Wollenberg, Esq.  
Wilmer, Cutler & Pickering  
900-17th Street, N. W.  
Washington, D. C.  
Counsel for the Columbia Broadcasting System, Inc.

Joseph A. Califano, Jr., Esq.  
Arnold & Porter  
1229-19th Street, N. W.  
Washington, D. C.  
Counsel for the Democratic National Committee

  
\_\_\_\_\_  
Joseph F. Miller



Dr. Frank Stanton  
President  
CBS  
51 West 52 Street  
New York, New York

Your decision to grant the Democratic National Committee time "to express its views" on CBS television and radio networks raises a number of far-reaching policy questions. The Republican National Committee would very much appreciate your clarification of the following points:

When will these programs be aired and how many such programs are envisioned? How will such programming be determined?

Is this an unrestricted grant of time to the Democratic National Committee? If so, does it constitute a delegation to the Democratic National Committee of your "journalistic judgment" under the Fairness Doctrine? You have vigorously argued in many briefs before the FCC that the Fairness Doctrine should be determined by the journalistic judgment of the network involved.

Has CBS changed its position since the Dewey, Paul E. Fitzpatric, 6 RR 543(1950), Stevenson, California Democratic State Central Committee, 20 RR 687(1960), and Goldwater, RNC, 3 RR2d 767(1964) cases? The contention of CBS in Paul E. Fitzpatric, supra, in substance, was "that it was necessary to distinguish between the reports made by holders of office to the people whom they represented and the partisan political activities of the

individuals holding office" (29 Fed. Reg. 10417). Do you feel that this policy is no longer valid?

In your brief of June 22, 1970 pertaining to In Re Licenses of Columbia Broadcasting Systems, Inc. and Broadcast - Plaza, Inc., it was stated that "The very complexity of the problem commends the feasibility of an ad hoc approach." p. 12. The predetermined time periods set aside for the Democratic National Committee would appear to be contrary to this position.

Further, it would appear that this is an unrestricted grant of time for whatever purpose the Democratic National Committee desires. If the Democratic National Committee does have this time to address any subject it wishes, whether or not under the restriction of the Fairness Doctrine, should not the Republican National Committee have equal time? We do not seek to deny the access of any person to time to discuss any issue. If in fact, the Democratic Committee is entitled to time for any purpose, I am sure you would agree that the other major, duly constituted political party is similarly entitled to equal time. This also raises the question of possible third parties.

If the Democratic National Committee does not have this time to address any subject it wishes, what content and format guidelines have been formulated. Who, for example, determines which issues will be presented during the time provided and what assurance have you that the spokesman for the Democratic

National Committee will address specific issues to which he may be entitled time under the Fairness Doctrine? Are Democrat candidates for Senate to appear while Republicans are excluded? This raises serious section 315 A problems.

Are we to assume that other groups will also be provided with a regular opportunity to present their views on controversial public issues? Why should such a policy be limited to political committees?

According to press reports which may or may not represent your point of view, it has been asserted that this time will be used to answer the President of the United States. Surely you do not believe that a political committee with no official governmental responsibility should be the appropriate political counterpart to the Chief Executive Officer of the United States Government. The Congress, of course, is a coordinate and equal branch of the government. Under the Fairness Doctrine, one might argue that the leadership of the Congress could be entitled, depending again on journalistic judgment, to offer a reply. If so, it would be logical also to assume that both parties in Congress should be given appropriate time to discuss any issues on which the President offered controversial views. Disagreement with the President is not the peculiar province of one party.

All of these unanswered questions should be clarified before any blanket decision is made to grant time either to the Democrat and Republican committees. Your telegram of June 22, 1970 seems to represent a very major departure from what we believe to be well established decisional law under the Federal Communications Act.

We are studying what our position should be in light of your new policy. We, therefore, hope to receive your reply to these questions at the earliest possible time.

Rogers C. B. Morton  
Chairman  
Republican National Committee

Dr. Frank Stanton  
President  
Columbia Broadcasting System, Inc.  
51 West 52nd Street  
New York, N.Y. 10019

Dear Dr. Stanton:

The Democratic National Committee Chairman's partisan attack on the Nixon Administration last evening answers many of the questions posed in my telegram of July 2 to which I have still received no reply.

Judging from the format and the content of last night's half-hour, CBS has abandoned journalistic judgment and responsibility and has made no attempt to establish guidelines as to the format and content of this type of program. Is there any precedent for any program which is allowed on the air with this lack of responsible restriction?

This show amounted to an unprecedented, inaccurate, personal attack on the President of the United States; yet your network promoted it as a "public service".

Rather than airing constructive differing views concerning controversial issues about which the President had addressed the nation, the program was a mere display of old-line partisan politics.

Not only were excerpts used of the President's addresses to the nation on issues which one might argue fall within the FAIRNESS DOCTRINE, but excerpts of his acceptance speech, inaugural speech, and press conferences were also shown, which clearly do not come within the FAIRNESS DOCTRINE, or as to which rebuttal or equal time had already been donated by the networks.

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Ethical questions have been raised by CBS's granting access to past tapes of the President, tapes that were questionably cut for partisan purposes. Ethical, as well as legal, questions also arise concerning the placement of a paid political appeal for donations immediately following what was promoted by CBS as a public service program. The appeal for funds at the close of that 30-minute segment made this "supposed" public service broadcast a half-hour free advertisement and was clearly misleading to the public.

These same ethical and legal questions arise concerning the right of a political party to invite requests for party propaganda and material during the course of a supposedly public service broadcast.

CBS in May refused to accept paid spot advertising from a responsible private group on a current issue of great national significance. Is it now saying it will do so? How does CBS decide which group may purchase spot advertising to appeal for funds?

Further, both CBS and the Democratic National Committee seem to be confused concerning the application of the equal time rule. The President is not a candidate. He is Chief Executive of the United States Government. Roger Mudd's commentary after the program shows a clear misunderstanding of the equal time provisions. So, too, does the Democratic National Committee's appeal to prevent the re-election of President Nixon in a paid political advertisement led up to by a partisan half-hour program.

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While CBS works hand-in-glove with the Democratic National Committee on this unprecedented attack, it refuses to answer the legal and ethical questions posed in my earlier telegram. We insist upon comparable free time on the grounds of the FAIRNESS DOCTRINE. If we do not receive your reply in 48 hours, appropriate legal action will be taken to require your compliance with the law -- and to prevent future abuse of your responsibility to the public.

Rogers C. B. Morton, Chairman  
Republican National Committee

Columbia Broadcasting System, Inc.  
51 West 52 Street  
New York, New York 10019  
(212) 765-4321

EXHIBIT 2

June 22, 1970

CBS OFFERS 25 MINUTES OF FREE TIME TO DEMOCRATIC NATIONAL COMMITTEE  
Will Also Accept Paid Spot Announcements from Political Parties  
For Fund Raising in Non-Campaign Periods

Following is the text of a telegram from CBS President Frank Stanton to Lawrence F. O'Brien, Chairman of the Democratic National Committee, offering the Committee 25 minutes of free time on the CBS Television and Radio Networks and informing the Committee that CBS will now accept paid spot announcements from political parties for fund raising purposes without confining these announcements to campaign periods. A copy of the telegram was sent to Senator Mike Mansfield (D., Mont.), Senate Majority Leader. The text of Dr. Stanton's letter to Senator Mansfield also follows:

JUNE 22, 1970

THE HONORABLE LAWRENCE F. O'BRIEN  
EXECUTIVE MOTOR INN  
LOUISVILLE, KENTUCKY

DEAR MR. CHAIRMAN:

THE PURPOSE OF THIS TELEGRAM IS TWOFOLD: (ONE) TO OFFER THE DEMOCRATIC NATIONAL COMMITTEE TWENTY FIVE MINUTES OF FREE TIME ON THE CBS TELEVISION AND RADIO NETWORKS, AT TEN PM EDT JULY SEVEN, FOR PRESENTATION OF THE COMMITTEE'S VIEWS: AND (TWO) TO INFORM THE COMMITTEE THAT WE WILL ACCEPT PAID ANNOUNCEMENTS FROM POLITICAL PARTIES FOR FUND RAISING PURPOSES WITHOUT CONFINING THESE ANNOUNCEMENTS TO CAMPAIGN PERIODS.

THE OFFER OF THE TWENTY FIVE MINUTE FREE TIME PERIOD (FOLLOWED BY A FIVE MINUTE CBS NEWS ANALYSIS) IS IN KEEPING WITH LONGSTANDING CBS POLICY TO ACHIEVE FAIRNESS AND BALANCE IN THE TREATMENT OF PUBLIC ISSUES, INCLUDING THE DISPARITY BETWEEN PRESIDENTIAL APPEARANCES AND THE OPPORTUNITIES AVAILABLE TO THE PRINCIPAL OPPOSITION PARTY. OUR OFFER TO ACCEPT ANNOUNCEMENTS



(UP TO ONE MINUTE IN LENGTH) TO RAISE FUNDS DURING NON-CAMPAIGN PERIODS BROADENS CBS POLICY WHICH ALREADY PROVIDES FOR SOLICITATION OF FUNDS FOR CANDIDATES DURING CAMPAIGN PERIODS.

THESE STEPS ARE INTENDED TO STIMULATE A FREE FLOW OF IDEAS ON THE ONE HAND, AND TO ENCOURAGE GREATER PARTICIPATION BY THE BODY POLITIC ON THE OTHER. THEY ARE NOT ADVANCED IN RESPONSE TO THE COMMITTEE'S PETITION FOR A DECLARATORY RULING BY THE FCC THAT "A BROADCASTER MAY NOT AS A GENERAL POLICY REFUSE TO SELL TIME TO RESPONSIBLE ENTITIES SUCH AS THE DEMOCRATIC NATIONAL COMMITTEE FOR THE SOLICITATION OF FUNDS AND FOR COMMENT ON PUBLIC ISSUES." IN FACT, CBS WILL URGE THE FCC TO DENY THE COMMITTEE'S PETITION ON GROUNDS, AMONG OTHERS, THAT IT WOULD VIOLATE THE COMMUNICATIONS ACT AND REPUDIATE THE FAIRNESS DOCTRINE.

WHILE WE REJECT YOUR PROPOSAL TO COMPEL THE SALE OF TIME, WE ARE FULLY AWARE OF THE CUMULATIVE IMPACT OF BROADCAST APPEARANCES OF REPRESENTATIVES OF THE PARTY IN OFFICE BECAUSE OF THEIR INHERENT NEWSWORTHINESS. THIS IS PARTICULARLY TRUE OF THE PRESIDENT. HISTORICALLY, THE MAJOR PARTY NOT OCCUPYING THE PRESIDENCY HAS COMPLAINED ABOUT WHAT IT HAS CONSIDERED AN INEQUITY IN TERMS OF ACCESSIBILITY TO TELEVISION (AND RADIO). AT THE SAME TIME, AS WE ALL RECOGNIZE, THE PRESIDENT HAS CERTAIN CONSTITUTIONAL DUTIES WHOSE PERFORMANCE IS ENHANCED BY HIS ABILITY TO COMMUNICATE DIRECTLY WITH THE PEOPLE.

FOR THESE REASONS WE EMPLOY A VARIETY OF JOURNALISTIC TECHNIQUES: FIRST, WE ENDEAVOR IN OUR REGULARLY SCHEDULED NEWS BROADCASTS, FOR EXAMPLE, TO PROVIDE APPROPRIATE OPPORTUNITY NOT ONLY FOR THE VIEWS OF THE ADMINISTRATION WHOSE ACTIONS MAKE NEWS BUT ALSO FOR THOSE WHO HAVE DIFFERENT VIEWS. SECOND, WE PRESENT ADDITIONAL COVERAGE OF POINTS AT ISSUE -- EITHER IN THE REGULARLY SCHEDULED TUESDAY EVENING CBS NEWS HOUR, THE SUNDAY FACE THE NATION OR SPECIALLY SCHEDULED PREEMPTIVE BROADCASTS SUCH AS THOSE WITHIN RECENT WEEKS ON THE CAMBODIAN CONTROVERSY. THIRD, FROM TIME TO TIME DURING THE COURSE OF THE YEAR WE WILL MAKE AVAILABLE FREE TIME TO THE PRINCIPAL OPPOSITION PARTY -- AS WE DID WITH RESPECT TO THE PRESIDENT'S STATE OF THE UNION ADDRESS EARLIER THIS YEAR -- UNDER THE OVERALL TITLE "THE LOYAL OPPOSITION."

CENTRAL TO OUR POLICY IS THE CONCEPT THAT NO SINGLE PROCEDURE CAN AFFORD A COMPLETE ANSWER TO THE PROBLEM OF ASSURING FAIRNESS AND BALANCE IN THE TREATMENT OF PUBLIC ISSUES. WITH ALL GOOD WISHES.

FRANK STANTON  
PRESIDENT, CBS

The Honorable Mike Mansfield  
United States Senate  
Washington, D. C. 20510

Dear Senator Mansfield:

This letter is in reply to your June 18 telegram in which you request, as leader of the majority party in the Senate, time on the CBS Television Network to comment on the nation's economic outlook in response to the President's June 17 address.

CBS has today offered the Democratic National Committee 25 minutes of free time on the CBS Television and Radio Networks, at 10 PM EDT July 7, for presentation of the Committee's views. We also reviewed our policies and procedures for insuring the major opposition party's accessibility to television and radio, citing our three main approaches: "First, we endeavor in our regularly scheduled news broadcasts, for example, to provide appropriate opportunity not only for the views of the administration whose actions make news but also for those who have different views. Second, we present additional coverage of points at issue -- either in the regularly scheduled Tuesday evening CBS NEWS HOUR, the Sunday FACE THE NATION or specially scheduled preemptive broadcasts such as those within recent weeks on the Cambodian controversy. Third, from time to time during the course of the year we will make available free time to the principal opposition party -- as we did with respect to the President's State of the Union address earlier this year -- under the overall title, 'The Loyal Opposition.'"

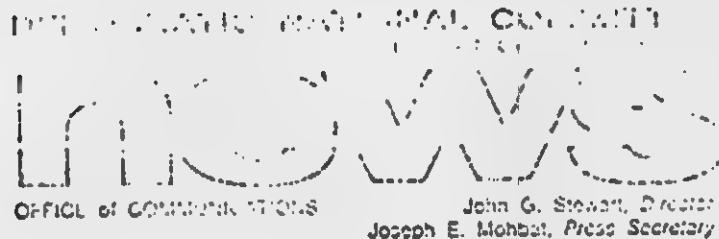
A copy of my telegram to Lawrence F. O'Brien, Chairman of the Democratic National Committee, in regard to these matters is enclosed. I trust that the measures we have taken and the policies we intend to pursue in the future will satisfy the purpose of your request for time. Moreover, I hope you will find that our policies provide a sound framework for the presentation of the views of the major opposition party.

With all good wishes.

Sincerely,

/s/ Frank Stanton

June 22, 1970



FOR RELEASE TUESDAY  
JULY 7, 10 P.M., EDT

DNC-929

THE DEMOCRATS RESPOND: PART ONE

WASHINGTON, D. C., July 7, -- Following is the transcript of "The Democrats Respond: Part One," a 25-minute broadcast-telecast presented by the Democratic National Committee over the Columbia Broadcasting System, which granted the time free to the Democratic Party:

PRESIDENT NIXON:

"In these difficult years, America has suffered from a fever of words; from inflated rhetoric that promises more than it can deliver; from angry rhetoric that fans discontents into hatreds; from bombastic rhetoric that postures instead of persuading.

"We cannot learn from one another until we stop shouting at one another -- until we speak quietly enough so that our words can be heard as well as our voices."  
(Inaugural Address, Jan. 20, 1969)

DEMOCRATIC NATIONAL CHAIRMAN LAWRENCE F. O'BRIEN:

Like most of you, I applauded the appeal for lowered voices and national unity when Richard Nixon assumed the Presidency 18 months ago.

Good evening. I'm Larry O'Brien, national Chairman of the Democratic Party. I managed the Democratic campaign for President in 1968. And I recognized after the election that we all had to turn away from the narrow confines of partisanship and work in the active pursuits of national reconciliation.

But today the divisions within our society are far greater than they were 18 months ago.

I don't have any easy answers. But the American people are not afraid to face problems squarely, and I know you want facts.

In this spirit, then, the loyal opposition has the responsibility to ask: How, in fact, are we being governed? What progress are we making as a nation? How can we do better? How can the nation and our two-party system meet the challenge of the '70s? How can we achieve the goals the new President set forth in his Inaugural Address 18 months ago?

NIXON:

In pursuing our goals of full employment, better housing, excellence in education; in rebuilding our cities and improving our rural areas; in protecting our environment and enhancing the quality of life -- in all these and more, we will and must press urgently forward.  
(Inaugural Address, Jan. 20, 1969)

O'BRIEN:

Those were the promises, no less urgent today than when the President spoke them on the Capitol steps 18 months ago. In a few areas -- such as reform of the outdated welfare system and the antiquated postal system -- the Nixon Administration has come forward with proposals that could make a lasting contribution to the fabric of American life.

But unfortunately, in most areas we see little or no progress; we share the concern of all Americans with the decline in our economy. Every housewife, every wage earner, every stock holder, every farmer, every small businessman -- yes and many big businessmen know that our economy is lagging far behind its potential.

A reporter asked the President about this at a news conference earlier this year, one year after Mr. Nixon's Inaugural Address.

REPORTER:

The question is, how, sir, do you assess the possibility that we may be in for perhaps the worst possible sort of economic conditions -- inflation and recession?

NIXON:

Well, Mr. Cornell, the major purpose of our economic policy since we came into office a year ago has been to stop the inflation which had been going on for 5 years without doing it so quickly that it brought on a recession.

Now, as a result, we are now in a position, the critical position, in which the decisions made in the next month or two will determine whether we win this battle.

I would simply say that I do not expect a recession to occur." (News Conference, Jan. 30, 1970)

O'BRIEN:

Regrettably, the President's expectations have not materialized, and, as so many of you are painfully aware, we have inflation and recession at the same time.

We call it Nixonomics: everything that is supposed to go up -- your income, productivity, housing construction, profits, the stock market -- is going down. Everything that is supposed to go down -- unemployment, interest rates, the cost of living -- is rising.

Every housewife is alarmed over the constant rises in food prices -- hot dogs up 14 cents a pound, hamburger up 12 cents a pound, potatoes up a third -- you know your grocery bill and how much it has gone up in the last year.

Do you know of a family earning less than \$13,000 annually that has been able to buy a home this past year? And even those able to borrow money for a new home know that a \$20,000 house costs an additional \$25,000 for interest charges alone -- the highest interest rates in 100 years.

In recent weeks Democrats and Republicans alike have been pleading with President Nixon to use the great powers of his office to stop this recession and inflation now, before more damage is done.

The President must use his great personal influence to roll back inflationary wage and price decisions, just as President Kennedy and President Johnson did on many occasions.

Right now -- tonight -- Mr. Nixon could direct the lowering of interest rates on home mortgages, car loans, and the clothes you buy on credit from a department store.

A Democratic Congress gave him this power last year, but unfortunately, he has refused to use it.

I urge the President to act immediately. Please don't wait any longer for our economy to decline even further.

There is probably nothing of greater worry to the American family than the threat of unemployment. At a news conference two months ago a reporter asked the President about this problem.

REPORTER:

"On a domestic subject, the economy, sir. Unemployment is up, the stock market is down, things look generally discouraging. Do you have any views on that, and do you have any plans?"

NIXON:

"Yes. Unemployment reached the point of 4.8, I noticed, this last month. In order to keep it in perspective, it should be noted that in 1961, 1962, 1963, 1964, and 1965 the average unemployment was 5.7. 5.7 is too high. 4.8, I think, is also too high. But the unemployment we presently have is the result of the cooling of the economy and our fight against inflation." (News Conference, May 8, 1970)

O'BRIEN:

As the President said, it is partly a matter of perspective that 5.7 percent unemployment rate mentioned in the early 1960s reflected a steadily declining rate of unemployment, a decline from the high of 7 percent which President Kennedy inherited from the Eisenhower-Nixon Administration of the 1950s.

The fact is that unemployment fell during the 1960s and it was down to 3.3 percent in December, 1968. It has climbed steadily since President Nixon took office. Since last December, we have experienced the fastest five-month rise in unemployment since the recession in the late 1950s. But beyond this, instead of talking statistics and percentages, let's remember that more than four million seven hundred thousand Americans are out of work tonight.

Let's look at another major concern and see what candidate Nixon promised -- and what has happened since he took office.

NIXON:

"And if we are to restore order and respect for law in this country, there's one place we're going to begin. We're going to have a new Attorney General of the United States of America. . .

"The wave of crime is not going to be the wave of the future in the United States of America." (Nomination Acceptance Speech, August 8, 1968)

O'BRIEN:

Of course every new President has the power to appoint his own Attorney General, but what has been the record of the Attorney General President Nixon appointed?

Eighteen months have passed. The crime rate in this country has not gone down. In the first three months of this year it rose 15 percent over the same period last year. And it is especially alarming that the fastest rates of increase are now in the suburbs and in rural areas of our country.

The way to stop rising crime is not to blame others, such as Congress. The way to stop the rising crime rate is to help local and state law enforcement agencies who carry the major burden.

NIXON:

"While it is true that State and local law enforcement agencies are the cutting edge in the effort to eliminate street crime, burglaries, murder, my proposals to you have embodied my belief that the Federal Government should play a greater role in working in partnership with these agencies.

"That is why 1971 Federal spending for local law enforcement will double that budgeted for 1971." (State of the Union Message, Jan. 22, 1970)

O'BRIEN:

That's how the President addressed the crime problem in his State of the Union Message last January. What action has followed those farsighted words?

The facts are that the Nixon Administration budget requires one thousand dollars from every one of you -- every American -- to run the government. Of that one thousand dollars, the Administration has earmarked only \$2.40 to assist state and local governments in the fight against crime -- cutting the democratic program in half.

And, while I am sure the President and the Attorney General want to reduce crime, I cannot understand why they have refused to support further improvements in the Safe Streets Act advocated by a Democratic President and enacted by a Democratic Congress in 1968 -- our major federal anti-crime program. They are improvements that would give cities with the greatest crime problems the most help.

I regret that so many of the top law enforcement experts brought to Washington by the Nixon Administration last year have now resigned, because, as they said, Attorney General Mitchell has refused to do what must be done to control the growing crime rate in America.



President Nixon's own anti-crime proposals have not been primarily directed at the national crime problem, but rather at Washington, D. C., and many people believe that some of these proposals are unconstitutional.

For the past generation both major political parties have stood together in the struggle for equal rights and opportunities for all of our citizens. In his acceptance speech, Mr. Nixon seemed to recognize the human stakes involved in the next urgent steps that must be taken in this continuing struggle.

NIXON:

"They want the pride and the self-respect and the dignity that can only come if they have an equal chance to own their own homes, to own their own businesses, to be managers and executives as well as workers, to have a piece of the action in the exciting ventures of private enterprise.

"I pledge to you tonight that we shall have new programs which will provide the equal chance..."  
(Nomination Acceptance Speech, August 8, 1968)

"Now I know all the words. I know all the gimmicks and the phrases that would win the applause of black audiences and professional civil rights leaders. I am not going to use them. I am interested in deeds. I am interested in closing the performance gap." (News Conference, Jan. 30, 1970)

O'BRIEN:

One of the biggest disappointments of the first 18 months of the Nixon Administration has been precisely this failure to match its words with deeds -- to provide new opportunities for minority citizens, opportunities that must ultimately benefit all Americans.

Again, a number of experts brought to Washington by the Nixon Administration have resigned. They recognized this performance gap.

The failure to define clearly the policy for school desegregation has led to confusion in local school systems, and growing resentment and discouragement by families seeking equal educational opportunities for their children.

Above all, in the past 18 months we have been denied the strong moral leadership on this issue which only the White House can provide -- that is must provide. We have lacked a President speaking forthrightly about the moral rightness of making the guarantees of the Constitution a reality for every American.

Again, Congress has had to take the lead -- in overcoming the Administration's obstacles to renewing the Voting Rights Act, a law that provides all Americans with the most basic of democratic rights as well as extending the right to vote to 18-year-olds.

The times call for a new vision of our priorities. The President seemed to understand this when he addressed the nation last month.

NIXON:

For the first time in 20 years, the Federal Government is spending more on human resource programs than on national defense.

"This year we are spending \$1.7 billion less on defense than we were a year ago; in the next year, we plan to spend \$5.2 billion less. This is more than a redirection of resources. This is an historic reordering of our national priorities." (Address to the Nation, June 17, 1970)

O'BRIEN:

The President says he favors this change in our priorities. But it was Congress, not the President, that cut five-and-a-half billion dollars from the Pentagon budget. And when Congress tried to channel less than a quarter of that money into educational and health programs -- libraries, books, student loans -- the President responded with a nationally televised veto message.

NIXON:

"Now, if I approved the increased spending contained in this bill, I would win the approval of many fine people who are demanding more spending by the Federal Government for education and health. But I would be surrendering in the battle to stop the rise in the cost of living, a battle we must fight and win for the benefit of every family in this Nation." (HEW Veto Message, Jan. 26, 1970)

O'BRIEN:

In that same week when Mr. Nixon vetoed the education and health bill as inflationary, he announced a new multibillion dollar spiral in the nuclear arms race. Why wasn't this just as inflationary, if not more so?

Only a few days ago Congress overrode another Nixon veto and so restored funds to build desperately needed hospitals and mental health facilities for the nation's sick people. The President turned down this bill because he said it was inflationary. But more than two-thirds of Congress -- including a majority of the members of the Republican Party -- voted to allocate for hospitals some of the money cut from the budget.

National priorities? Let's consider again each American's thousand dollar share of the nation's budget: \$4.50 for air and water pollution; \$5.00 for urban renewal for our cities; \$7.50 for elementary and secondary education; 50 cents for training the handicapped -- and \$375.00 for the military.

Once again, we must look to Congress for leadership. It was Congress that more than doubled President Nixon's initial request for an increase in social security, providing a badly needed 15 percent increase. And just this week, your paychecks will be larger because a Democratic Congress voted to increase personal tax exemptions and eliminated the 5 percent surtax.



So I ask you tonight: Who is really engaged in a "historic reordering of our national priorities" -- the Congress or the President?

One of our most urgent priorities for this decade is cleaning up our environment. Most of you heard the President speaking to this problem in his State of the Union Message this past January.

NIXON:

"The program I shall propose to Congress will be the most comprehensive and costly program in this field in America's history.

"It is not a program for just one year. A year's plan in this field is no plan at all. This is a time to look ahead not a year, but 5 years or 10 years -- whatever time is required to do the job.

"I shall propose to this Congress a \$10 billion nationwide clean waters program to put modern municipal waste treatment plants in every place in America where they are needed to make our waters clean again, and do it now." (State of the Union Message, Jan. 22, 1970)

O'BRIEN:

That is what President Nixon said he would propose, and to many it seemed an impressive call for action. But the fact is that the 10 billion dollar program he promised calls for federal spending of only four billion dollars. The amount Mr. Nixon proposed for the first year of his new program to fight water pollution turned out to be less than Congress had already authorized.

And so, 18 months later, the pattern of the Nixon Administration's domestic program is abundantly clear -- ringing calls for action, but few results, except when Congress takes the initiative and calls the shots.

But our attention to our critical domestic priorities continues to be diverted by the seemingly endless struggle in Indochina, about which the President addressed the nation on April 30.

NIXON:

"Tonight, American and South Vietnamese units will attack the headquarters for the entire Communist military operation in South Vietnam. This key control center has been occupied by the North Vietnamese and Vietcong for 5 years in blatant violation of Cambodia's neutrality." (Address to Nation, April 30, 1970)

O'BRIEN:

I have no intention of "taking on" the President in difficult decisions about military strategy, but I do want the President to level with all of us.

I share the relief of all Americans that our troops have crossed back into South Vietnam, but I also share the confusion of most Americans who wonder what Cambodia is really all about.

(more)

The President never consulted with his Cabinet or with Congress before he expanded the Indochina war. He has never told the American people that the Communist headquarters he said would be attacked was never attacked and apparently never even located.

Instead Mr. Nixon now has given other reasons to justify his surprise move of American troops into a neutral country, among them the preservation of a new Cambodian government.

And now we have become involved, whether or not we like it, in that new government. Now -- although our ground troops are out -- our bombers and our artillery continue to bomb the Cambodian nation. Now the South Vietnamese army continues to sustain a full scale military operation in Cambodia.

Before our military incursion, as this map shows, Communist activity in Cambodia was primarily limited to border sanctuaries.

But now, just two months later, Communist control has expanded to half the land area of Cambodia and Communists have infiltrated over a large part of the rest of that beleaguered country.

The question must be asked: Has our action actually saved Cambodia, or put its survival in greater jeopardy?

To be a patriotic American is to question and probe the activities of those who govern us. That is our duty and our right.

The newly elected President promised to "bring us together again." But the opposite of that is occurring, polarization, unfortunately encouraged by Vice President Agnew in speech after speech across the country.

AGNEW:

"You can't bring 200 million people together. Let's stop talking in technicalities and look at the President's figure of speech -- was a plea for national unity to bring the responsible elements of our society together. But let's never overlook the fact that there are also irresponsible elements of our society and instead of attempting to dignify and condone what they're doing, let's polarize -- let's get rid of these undesirable people by recognizing that they cannot participate in our legitimate processes of government unless they play the rules." (Washington Window, UPI Interview, November, 16, 1969)

O'BRIEN:

The words and thoughts of Vice President Agnew leave me saddened and disheartened. While I realize there are many who support Mr. Agnew, I deeply believe his road can only lead to further division and mistrust among our people.

In attacking the loyalty of millions who sincerely question the course of the present Administration, the Vice President is himself questioning and jeopardizing the very democratic tradition that has made us strong.

Is this the way we are to be brought together again? Is this the lowered voice President Nixon urged upon all of us eighteen months ago?

This is a time for healing, not for wounding, for trust and understanding, not for hatred and suspicion.

For 14 years, I was a friend and close associate of a man who could express these feelings far better than I. One bright, wintry day the world seemed full of promise as he reached out to us and summoned forth the best we Americans had to offer.

KENNEDY:

"All of this will not be finished in the first one hundred days. Nor will it be finished in the first one thousand days, nor in the life of this Administration, nor even perhaps in our lifetime on this planet. But let us begin..."  
(Kennedy Inaugural Address, Jan. 20, 1961)

O'BRIEN:

The Democratic Party, and the Democrats in Congress accepted that challenge a decade ago -- and we rededicate ourselves today.

\* \* \*

# CBS

Columbia Broadcasting System, Inc.  
51 West 52 Street  
New York, New York 10019  
(212) 765-4321

Robert V. Evans  
Vice President and General Counsel

July 23, 1970

Mr. William B. Ray, Chief  
Complaints and Compliance Division  
Federal Communications Commission  
1919 "M" Street, N. W.  
Washington, D. C. 20036

Dear Mr. Ray:

The Commission now has before it complaints filed by a number of different groups\* claiming that the fairness doctrine has been violated because the networks have failed to present opposing spokesmen to answer Presidential appearances relating to the Vietnam war and other matters.\*\*

At the same time, the present complaint, filed by the Republican National Committee ("RNC"), claims that CBS has gone too far by affording 25 minutes of time to the Democratic National Committee ("DNC") to respond to the President in a July 7, 1970 broadcast entitled "Loyal Opposition" THE DEMOCRATS RESPOND: PART I. To compensate, says the RNC, it is entitled to time to reply. We disagree, and so advised Mr. Rogers C. B. Morton, Chairman of the RNC by letter on July 15, 1970, copy

\* The Committee for the Fair Broadcasting of Controversial Issues (May 25, 1970); the Los Angeles Chapter of Business Executives Move for Vietnam Peace (June 12, 1970); 14 United States Senators and the Amendment to End the War Committee (July 8, 1970). The Commission also has before it the June 22, 1970 comments filed by the Democratic National Committee ("DNC") in the Commission's Notice of Inquiry and Proposed Rule Making in the Matter of Obligations of Broadcast Licensees under the Fairness Doctrine, which make a similar suggestion.

\*\* In a related matter the DNC requested on May 19, 1970 a declaratory ruling from this Commission that "a broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC for the solicitation of funds and for comment on public issues."

of which is attached to this letter.\* The "Loyal Opposition" format reflects our dedication to maintaining fairness and balance in the coverage of these issues.

We believe that CBS News' coverage of controversial issues has been both extensive and fair.

We do not suggest that this format is the only way to provide balance in connection with Presidential appearances. In a recent speech discussing the "Loyal Opposition" series, which we have attached to this letter, Dr. Frank Stanton, President, CBS, stated:

"But it is one path to ensuring that public opinion, the foundation of action in a free society, is formed on the basis of a balanced presentation of national political viewpoints -- a balance that cannot be achieved by any one device, legislative or administrative in its inception, that locks all broadcasters into a single approach to this program.

"There is no technique, no stratagem, no instrument by which law or regulation can create by fiat or by formula an enlightened public opinion. It has to rise from a multiplicity of sources of information, a multiplicity of articulated views and a multiplicity of methods of conveying that information and of circulating those views. Whenever all the media, or all the elements within a medium, are required to do the same thing in the same way, that multiplicity is reduced, and the likelihood of an enlightened public opinion is diminished....

\* \* \*

"In making our time offer to the principal opposition party, we were not seeking to create a pattern for all broadcasting. We hope our counterparts will seek to achieve the same effect in

\* The RNC request for time stated: "If we do not receive your reply in 48 hours, appropriate legal action will be taken...." RNC Complaint Ex. 1, p. 7. The RNC filed its complaint on July 13, 1970.

different ways. Our purpose was -- and remains -- to provide for the addition to the national dialogue of a voice of responsible dissent or difference that represents a major body of political thought."

The RNC complaint, while purportedly seeking relief under the traditional fairness doctrine, cites no controversial issues of public importance discussed in the "Loyal Opposition" broadcast -- THE DEMOCRATS RESPOND: PART I -- that were not covered in the broadcast appearances of the President. To be sure, a number of controversial issues of public importance were treated in the "Loyal Opposition" broadcast. All of the subjects discussed have been explored in depth by the President in addresses to the nation and in Presidential news conferences broadcast over radio and television. All of these issues have also been covered many times in CBS news and public affairs broadcasts.\* This is not disputed by the RNC, and no attempt has been made by the RNC to establish, as it must to support a complaint under the fairness doctrine, that there was, overall, an imbalance of CBS coverage of any issue such as to deny reasonable opportunity for the discussion of conflicting views.\*\*

The RNC complaint suggests that CBS has failed to comply with the traditional fairness doctrine in only one respect. It states that the issue of "which party" -- the Republican or the Democratic party -- should occupy the Presidency was an issue discussed in the "Loyal Opposition" broadcast that was not covered in the President's appearances. Although an examination of the text of the "Loyal Opposition" broadcast shows that Mr. O'Brien nowhere explicitly addressed the question of which party should hold the Presidency, it is arguable that any broadcast by the DNC will imply that a representative of the Democratic party should hold that office and

\* Thus, for example, the Commission itself has recognized: "The issue [of]...Vietnam -- is one to which the networks have devoted, and continue to devote, substantial amounts of time for contrasting viewpoints." Letter to Mrs. R. J. Paul, November 20, 1969.

\*\* Even if that preliminary burden had been met, the fairness doctrine leaves to the broadcaster choice of spokesman and format for meeting his fairness obligation. California Democratic State Central Committee, 20 RR 867 (1960); Report on Editorializing by Broadcast Licensees, 13 FCC 1246, 1251 (1949); Cahill, "Fairness" and the FCC, 21 Fed. Comm. B.J. 17, 23 (1967).



that the "Loyal Opposition" broadcast did so. But if implicit messages are to be considered, it is equally true that a broadcast by the President -- the Chief Executive of our government, as well as the leader of his party -- will have as an underlying objective the desire to persuade the listener of the merits of the Administration's course of action. Certainly when the President speaks, he seeks to inspire confidence in his ability to govern and the wisdom of the Administration's policies and seeks to perpetuate his party's stewardship of the government. Indeed, while the RNC emphatically denies it, some of the Presidential appearances between November 1969 and June 1970 seemed to address the "which party" issue quite explicitly.\*

\* Thus, in President Nixon's June 17, 1970 address on economic policies he stated in part:

"This administration took office after a long period in which this Nation lived far beyond its means. In the decade of the sixties, Federal deficits totaled \$57 billion, and the American consumer was forced to pay the piper in terms of a rising spiral of prices.

"Seventeen months ago, when this administration took office, we stood at a crossroads of economic policy. There were actually four roads open to us. One was the road of runaway inflation -- to do nothing about Government spending and rising prices, to let the boom go on booming -- until the bubble burst. That was the road the Nation was taken on in the sixties, and the people who suffer most along that road are the millions of Americans living on fixed incomes.

\* \* \*

"In the 3 years before this administration took office, Federal spending rose an average of 15 percent a year -- the sharpest rate of increase since the Korean war. In the current fiscal year, we slashed that rate of increase in half, to 7 percent. And in the coming year, we intend to cut that rate of increase in spending by half again."



In any event, under the fairness doctrine the Commission does not look at one broadcast or even one series of broadcasts to see whether opposing views have been presented. The RNC does not suggest and could not suggest that the issue of "which party" is not covered adequately and continuously in CBS news and public affairs broadcasts. This coverage fully satisfies the traditional fairness doctrine and has included ample opportunities for Republicans to state their position on the issues. The additional fact that the July 7 "Loyal Opposition" broadcast on the CBS Television Network was followed on a few stations by a locally placed paid political announcement on behalf of the DNC is irrelevant.\*

What the RNC really seeks, under the guise of a fairness complaint, is a ruling significantly expanding the Commission's traditional fairness doctrine. While the RNC castigates CBS for presenting the "Loyal Opposition" broadcast, the ruling the RNC desires is that, having done so, CBS should give equal time to the RNC.\*\* The RNC's

\* This paid political announcement was not transmitted over the CBS Television Network but was offered by the DNC to individual stations, including the five CBS Owned television stations. Time for this announcement was sold by the CBS Owned stations pursuant to the CBS policy set forth in our June 22, 1970 response to the "Democratic National Committee Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations." The announcement was separated from the "Loyal Opposition" broadcast by several minutes of CBS NEWS analysis, as well as by the insertion of non-political commercial material. Further the CBS Owned television stations made appropriate on-the-air identification of the fact that this was a paid announcement on behalf of the DNC. The RNC is, of course, free to purchase time for fund raising announcements under the CBS policy.

\*\* It states (p.8) "[w]e do insist that, having opened its programs for 'partisan control' to become instruments of partisan advocacy, we, as DNC's major partisan antagonist must equally share this privileged exception to CBS's professed articles of journalistic faith."

position is, in effect, that any broadcast prepared by the DNC raises the "which party" issue; that the RNC has a specially privileged status with respect to a broadcast such as the "Loyal Opposition"; and that only the RNC -- not CBS News and not even the President -- is qualified to present opposing views.\*

We submit that this drastic and ill-considered suggestion, like the other complaints now before the Commission should be rejected.

We have treated a number of pertinent issues in the replies that we have filed to the other complaints now before the Commission.\*\* We have demonstrated that CBS News maintains fairness and balance with respect to its schedule, and we have detailed our compliance with the fairness doctrine with respect to the Presidential appearances at issue. At the same time, we have vigorously opposed suggestions that the fairness doctrine be expanded, as suggested by the complainants, to require that "equal time" for a personal reply be afforded to spokesmen for opposing views. We submit that it would not serve the public interest if every time one person is presented all of his opponents on the issue discussed would be entitled to equal time, after which their opponents

\* The RNC complaint (p. 4) states: "This is the rather unique case where the appropriate respondent is so conclusively and exclusively elected that for CBS to search further for another would constitute behavior so outrageous and biased as to utterly negate its qualifications as a 'public trustee.'"

\*\* We incorporate by reference herein the Comments filed by CBS on June 22, 1970, in connection with the DNC Request for Declaratory Ruling (Commission Reference 8330 C5-1344) and in connection with the complaint of the Committee for the Fair Broadcasting of Controversial Issues (Commission Reference 8330 F1 C5-1986), CBS' Comments and Reply Comments to the Commission's Notice of Inquiry and Proposed Rule Making in the Matter of Obligations of Broadcast Licensees under the Fairness Doctrine, Docket No. 18859, filed by CBS on June 29, 1970 and July 13, 1970 respectively, and the reply to the complaint of the 14 United States Senators and the Amendment to End the War Committee filed by CBS on July 20, 1970.

would also be entitled to equal time, and so on ad infinitum. We have argued that the radically new standards proposed by the RNC and various other complainants would subvert rather than serve broadcasters' efforts to achieve fairness and balance, would seriously interfere with broadcast journalism, would be contrary to the Communications Act and raise serious questions under the First Amendment.

In seeking the right to "equal time" whenever the DNC presents a broadcast, the RNC has advanced several unsupportable allegations:

First, Chairman Morton in his telegrams and at his July 16, 1970 news conference concerning this complaint, irresponsibly suggested that CBS, by granting time to the DNC, was motivated by a desire to favor the Democrats. The suggestion is unqualifiedly false. The President, and other Republican leaders have often appeared on CBS. Moreover, the CBS policy of making time available for the principal opposing party to answer the President will apply equally to the Republican party when there is a Democratic President.

We note that in the past it has been the Republicans rather than the Democrats who have been the primary beneficiaries of the CBS policy of offering time to the opposition. For example, after President Johnson delivered his State of the Union messages in 1966, 1967 and 1968, CBS provided prime time for a Republican appraisal of the President's addresses. These Republican broadcasts presented the views of Republican leaders on the President's policies. Just as the Republicans have made use of these prior opportunities to present their position on national issues, Chairman Morton made it clear at his recent press conference, that when "Loyal Opposition" time is offered to the RNC in the future, it will be accepted and utilized.

Second, the RNC complains that CBS violated its own policy by permitting "the DNC to use the time for any purpose...." (p. 2) The RNC has misapprehended the purpose of the "Loyal Opposition" broadcasts and CBS policy. The purpose of the "Loyal Opposition" broadcasts is not to supply the DNC with an opportunity "to use the time for any purpose", but to offer the principal opposition party an opportunity to reply from time to time to a President on major public issues treated in Presidential appearances. This is an issue-oriented format and the July 7 "Loyal Opposition" broadcast fulfilled this purpose.

For the most part, for reasons developed at length in our reply to the DNC Request for Declaratory Ruling (pp. 3-10), CBS relies on the efforts of news professionals to produce broadcasts which provide a balanced treatment of important public issues including extensive presentations by partisans of their viewpoints. However, the President of the United States holds a unique position in American life. As we have previously discussed,\* his every broadcast utterance is not subject to mechanical "equal time" rebuttals either under the Commission's fairness doctrine or pursuant to CBS policies. At the same time we have concluded that in view of the tremendous importance of television and radio as a medium of communication, and the increasing use of prime time television and radio by the President\*\*, it is appropriate to

\* See CBS Reply Comments in Docket No. 18859.

\*\* As Dr. Stanton noted in his attached July 10 remarks at the 1970 National Broadcast Editorial Conference, in the first 18 months of their Administrations, prime-time Presidential appearances were as follows:

President Eisenhower.....	3 times
President Kennedy.....	4 times
President Johnson.....	7 times
President Nixon.....	14 times

While President Kennedy's television appearances during all time periods were more frequent than President Nixon's, most of President Kennedy's appearances were during the daytime, while most of President Nixon's appearances were in prime time. Despite the large number of appearances by President Kennedy, the average person viewed President Nixon on CBS for almost 50% more time than he viewed President Kennedy. (These estimates were prepared by the CBS Department of Economics and Research and were derived from audience data supplied by A. C. Nielsen Co.)

make time available to the principal opposition party periodically to present its opposing views. For this reason we developed the "Loyal Opposition" broadcasts which we will schedule at appropriate intervals when, in our judgment, they would serve the interest of more fully informing the viewing public and promote fairness and balance in our overall schedule. This is fully supportive of CBS' policy that the public must be fully and fairly informed and in no way inconsistent with our policy that the bulk of the information broadcast should be presented by our own news organization as the most effective method of informing the public.\*

In the past, as discussed above and in our Reply Comments in Docket No. 18859\*\*, CBS has made time available not only to the President, but also to spokesmen of both the Democratic and the Republican parties to answer Presidential State of the Union and other broadcasts. The RNC suggests, however, that the "Loyal Opposition" concept is different from prior broadcasts because the reply time was offered to the DNC rather than members of Congress.

If a precedent is needed to support the appropriateness of dealing with the national committee of a political party in connection with providing opportunities for a reply to the President, we cite the September 18, 1963 telegram to CBS from William E. Miller, Republican National Chairman concerning the broadcast appearance by President Kennedy to discuss tax legislation, which stated:

"It was, of course, in full keeping with your public service obligation to place your network at the disposal of the President tonight so that he would advertise one side of the current debate over the wisdom of a tax cut under present conditions.

\* \* \*

\* See June 22, 1970 letter to William B. Ray, pp. 3-8 in response to the DNC Request for Declaratory Ruling.

\*\* July 13, 1970, CBS Reply Comments, pp. 6-7.

"That so fateful an issue for every citizen should be nationally disseminated as a public service from only one point of view is clearly wrong. I must request you, therefore, not simply in behalf of the Republican Party, but also in behalf of millions of citizens of both parties, to provide facilities comparable to those granted the President for a spokesman or spokesmen of my choosing, as Chairman of the opposing political party, to present the other side of the argument." (Emphasis added)

This request was granted by CBS.

Again on April 23, 1964, Chairman Miller requested comparable time on CBS as a result of the March 15, 1964 three-network interview with President Johnson, "A Conversation With The President." In that letter Chairman Miller offered to prepare a program which would have included the appearances by prominent leaders of the Republican Party. In this case, the request for time was rejected by CBS. It is significant that the Republican National Chairman on both of these occasions felt it appropriate, and consistent with his responsibilities to request reply opportunities as a result of Presidential appearances.

In offering "Loyal Opposition" time to the DNC CBS sought to solve an admittedly difficult problem of choosing the appropriate spokesman for the Democratic party. Initially we note that the DNC is free to choose whomever it deems to be an appropriate spokesman, including members of Congress, subject to the responsibilities of stations under Section 315 of the Communications Act. Indeed, the chairman of the national committee has often been a member of Congress, as Mr. Morton is today. Moreover, the national committee of a political party is far more significant than the RNC suggests. Between the period of national conventions it may be fairly said to be the only authorized spokesman for the party.\*

\* The attached speech given by the President of CBS, Dr. Frank Stanton, describes in detail why the "Loyal Opposition" program is sound evolution in electronic reporting, why time was offered to the DNC and why the Chairman of the DNC is an appropriate spokesman (though obviously not the only appropriate spokesman) to reply to Presidential broadcasts.



In any event, the ultimate question before the Commission is whether CBS has violated the fairness doctrine. As we have demonstrated, there is no supportable claim that in choosing to present the views of the principal opposition party, CBS has violated the traditional fairness doctrine, which leaves the broadcaster wide discretion in achieving balance in discussion of the issues.\* The question, therefore, is whether the Commission should expand the fairness doctrine as suggested by the RNC and by complainants in related fairness proceedings now pending before the Commission.\*\* For the reasons we have discussed here and elsewhere, it should not, and under the Communications Act, cannot, do so.

The sole policy justification given by the RNC for this suggested expansion is that elected political officials might be inhibited if broadcast time were to be offered to the principal opposition party. The RNC seems to suggest that the President of the United States and other elected political officials should be immune from partisan criticism -- at least by the chairman of the opposition party -- because otherwise they would be reluctant to appear on radio and television, or might be inhibited in what they would say. This is a truly remarkable position. The Commission has ruled that broadcasts by the President discussing controversial issues are subject to the fairness doctrine. California Democratic State Central Committee, 20 RR 867 (1960); Republican National Committee, 3 RR 2d 767 (1964).

Partisan political discussions both by and against a current Administration are a long-standing and, we believe, healthy aspect of the American political system. CBS believes it would not be performing its function as a source of news and information if it were to prohibit, as the RNC seems to suggest, the broadcasts of discussions because they were sharp or partisan. This kind of robust debate is central for the preservation of our governmental institutions. The Supreme Court has recognized that there is:

\* California Democratic State Central Committee, 20 RR 867, 869 (1960).

\*\* See Page 1 of this letter (Footnote \* and \*\*).



"a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." New York Times Co. v. Sullivan, 376 US 254, 270 (1964).

We reject the RNC's suggestion that elected political officials, particularly the President of the United States, are so timid that they would be inhibited in their public appearances because of the possibility of partisan replies. No such inhibition has been manifested in the past, and we trust that none will appear in the future.

#### CONCLUSION

The complaints now pending before the Commission seek revisions of the fairness doctrine to restrict licensee discretion and to impose stringent requirements in the area of Presidential appearances and replies. However, the very quantity and diversity of these requests forcefully emphasize, we submit, the need for licensee discretion in applying the fairness doctrine.

Moreover, to reject the principle of licensee discretion in this area would necessarily confront the Commission with frequent requests for time and put it in the position of being the arbitrator of which political parties and groups should be heard, when they should be heard, and what they should be permitted to say. Any such role for the Commission will raise the most serious problems under the First Amendment and the Communications Act and is plainly contrary to the Commission's own sound policy.

We believe that the Commission should decline to make the ruling requested by the RNC.

Respectfully submitted,

*Robert V. Evans*

Wilmer, Cutler & Pickering  
of Counsel

CC: W. Theodore Pierson, Esq.  
Pierson, Ball & Dowd  
1000 Ring Building  
Washington, D. C.

By Hand



Columbia Broadcasting System, Inc.  
51 West 52 Street  
New York, New York 10019  
(212) 765-4321

Robert V. Evans  
Vice President and General Counsel

Dear Mr. Chairman:

This is in reply to your recent telegrams to Dr. Frank Stanton concerning:

(a) the CBS offer to provide the Democratic National Committee (DNC) "time to express its views on CBS Television and Radio Networks" and

(b) the July 7, 1970 "Loyal Opposition" broadcast - THE DEMOCRATS RESPOND: PART I - with respect to which you request "comparable free time on the grounds of the Fairness Doctrine."

#### First

From time to time during the course of the year we will make free time available to the principal opposition party - at this time the Democratic Party represented by the DNC - for the purpose of discussing public issues. There will be no restrictions on the format of these broadcasts. At this moment no fixed number of broadcasts has been scheduled and no particular time period in our broadcast schedule has been set aside. In determining the need to schedule a "Loyal Opposition" broadcast, we will seek to maintain the long standing CBS policy of assuring fairness and balance in the treatment of public issues and will consider the President's use of radio and television and the broadcast opportunities available to the principal opposition party in this appraisal.

#### Second

With respect to your question concerning prior FCC decisions relating to Presidential speeches, we note that the Federal Communications Commission held in its decisions that the Fairness Doctrine was applicable when a President addresses the nation to discuss controversial issues of current importance. CBS has always recognized its fairness responsibility and has continuously utilized a variety of formats to insure fair and balanced coverage of such issues.

Third

We do not plan to provide the Republican National Committee with "equal time" as a result of the broadcast of "Loyal Opposition." Surely there is no doubt that the President has addressed himself to controversial issues of public importance in his broadcast appearances. Nor have you in your telegrams suggested that the July 7, 1970 "Loyal Opposition" broadcast dealt with issues that have not been covered with fairness and balance on CBS News broadcasts, including appearances by the President. This is because, as we have already noted, our decision to provide time to the principal opposition party was based on the conclusion that the "Loyal Opposition" broadcast was consistent with our efforts to maintain fairness and balance as a result of the frequency of the use of radio and television by President Nixon - who is, of course, the leader of the Republican Party. Further, we do not plan to provide "other groups" with "equal time," as the full panoply of divergent opinions are regularly seen and heard over CBS consistent with our obligations under the Fairness Doctrine.

Fourth

We offered the DNC the opportunity to present the July 7 "Loyal Opposition" broadcast for the following reason. We live in a two-party system. In the case of the party in Executive power, their leader is the President. When the President speaks he acts as the leader of the Nation and of his party. It is hardly conceivable that his party would want broadcast time to state its disagreement with him. In the case of the party out of power, this is not the case. No one member of the present loyal opposition speaks for all Democrats. However, the DNC represents the Democratic Party as a whole, every state has representatives on it, as well as a voice in its decisions. Thus, we believe it is the logical organ to select those who can best articulate the issues and offer constructive alternatives to the President's programs.

Fifth

We refer to your question as to whether "Democratic candidates for Senate (will) appear while Republicans are excluded? This raises serious Section 315(a) problems." As noted above, we do not intend to place restrictions on the "Loyal Opposition" format. Accordingly, if the opposition party selects a Democratic Senatorial candidate, we would, of course, inform those of our affiliates on whom this would impose Section 315 obligations so that they could exercise their options - that is, not to carry the broadcast or to offer "equal time" to the Senator's opponents or to secure waivers from those opponents.

Sixth

With respect to your question regarding CBS' responses relating to the purchase of "spot advertising" on current issues of importance, please be advised that CBS will maintain its long standing policy of not selling time for the expression of viewpoints on controversial issues. We believe that such issues are covered with fairness and balance in our news schedule. On the other hand, we have long had a policy of permitting political candidates and proponents of ballot propositions to purchase time in elections. We have recently broadened that policy to allow the purchase of "spot advertising" up to one minute in length by political parties - such as the Republican Party - for fund raising purposes. This was based on our recognition of the importance of adequate public financial support for political parties.

Seventh

You suggest that it would be more appropriate to give time to the Congressional leadership rather than the National Committee of the political opposition. This option is, of course, open to the National Committee of the principal opposition party. We believe that in connection with the "Loyal Opposition" broadcasts it is most logical to put responsibility for deciding who should speak for the party in the hands of the party's National Committee. By locating responsibility in the leadership of the Congress to speak for the "Loyal Opposition," there is always a question as to who the appropriate leader is on the particular question at hand. On each substantive legislative issue there may be a different floor leader charged with guiding the legislation through the floor debate. Certainly the President pro tempore of the Senate and the Speaker of the House do not always speak for the membership of their respective Houses, or even, at times, for a majority of their party. Thus, no one identifiable person - not the Majority Leader or his assistants - can be singled out as the spokesman for the Congress in opposition to the President on all issues. While committee chairmen address themselves to legislation before their committees, there are 59 joint, standing, select and special committees and no guarantee that these 59 chairmen would be able to present a cohesive broadcast on the issues before the Congress and of concern to the Nation. Of course, this is not to say that Congressmen ought not to be heard. It is the CBS rule - not the exception - to afford Congressional figures ample opportunities regularly to discuss their positions on the issues on CBS News broadcasts.

We reject as completely unwarranted your gratuitous assertion that CBS has "worked hand-in-glove with the Democratic National Committee

on this unprecedented attack." We have conceived the "Loyal Opposition" broadcasts, with the CBS News analysis following them, as a format which will add a significant new dimension to the understanding of complex public issues. To reiterate, we will continue to strive to maintain accuracy and balance in our overall news broadcast schedule and believe the objective of fairness has been advanced by the first "Loyal Opposition" broadcast.

We respectfully reject your request for comparable time under the Fairness Doctrine.

Very truly yours,

/s/ Robert V. Evans

The Honorable Rogers C. B. Morton  
Chairman  
Republican National Committee  
1625 I Street, N.W.  
Washington, D.C. 20006

July 15, 1970

Columbia Broadcasting System, Inc.  
51 West 52 Street  
New York, New York 10019  
(212) 765-4321

## 1970 NATIONAL BROADCAST EDITORIAL CONFERENCE

### Loyal Opposition

Remarks by FRANK STANTON, President, CBS

Park City, Utah, July 10, 1970

The National Broadcast Editorial Conference this year is an extremely appropriate forum to explore the many pressing problems that come under the umbrella of the general theme of your meetings.

The function of the editorialist in a democratic society is a high one. An essential proposition of democracy is, in the words of Washington's Farewell Address, that "in proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened."

There are two necessary ingredients in the creation of an enlightened public opinion. One is the straightforward, thorough and prompt reporting of the facts without which no opinion can be enlightened. The other is the stimulation of discussion that can lead to a national sense of purpose, direction and priority, without which no opinion can be effective.

You are in the vanguard of that second process. I congratulate you on the opportunity for service that you have and for the sense of responsibility that you are showing in making the most of it. I am happy and proud to have this privilege of participating in your meetings.

There is no question that, as change is the first law of nature, it is the basic law also of the relationships between all human institutions, and



neither the White House nor the press has been any exception. Without any major legislative or judicial intervention, the press has evolved in this country from the bitter partisan broadsides of the eighteenth century through the strident personal journalism of the nineteenth century into the increasingly disciplined concept of the press, on the whole, as a profession in our own time. The Presidency, too, has changed, particularly with the expansion of its powers and -- especially in the context of our discussions here today -- the direct access, made possible largely by television, of the President to the people, very much on his own terms and with his own timing.

The Mainspring of Self-Government No single fact of our changing political life -- certainly no single factor in the changing relationship between the government and the press -- seems to me more significant than this, because it bears directly and strongly upon the shaping of that enlightened public opinion which is the mainspring of any form of self-government. For the words of the President, speaking as he does both in his constitutional roles of chief executive and commander-in-chief and in his extraconstitutional role as the head of his party, carry an authority, a prestige and a visibility that have a counterpart in no other institution, governmental or non-governmental.

Moreover, there is an inherent newsworthiness in anything that the President says. In addition to his huge direct audiences, in most cases over all nationwide commercial television and radio networks simultaneously, all of what he says is later reported somewhere and something of what he says is reported everywhere. In the case of the incumbent administration, these built-in advantages of the Presidency in forging public opinion have been pressed to an unprecedented degree. The record reveals a pronounced

increase in the use of prime time (7 to 11 p.m.) by the Presidents.

Here are the figures since the first Eisenhower administration for the appearances of the last four Presidents on prime time network television, during the first 18 months of their administrations:

President Eisenhower .....	3 times
President Kennedy .....	4 times
President Johnson .....	7 times
President Nixon .....	14 times

Or putting it another way, President Nixon has appeared on network prime time television as many times as Presidents Eisenhower, Kennedy and Johnson combined, in their first 18 months in office.

These figures exclude appearances on regularly scheduled news broadcasts; reports on foreign trips; charity appeals; convention and campaign appearances in the case of President Johnson; and, in that of President Nixon, his Apollo appearances.

Now, in a period when the vastness, the speed and the complexity of national and world problems put a strain upon our political institutions wholly unimagined by their creators, no one can complain because the elected leader of the nation has direct and unfiltered access to those to whom he is ultimately responsible. It is, in fact, one of the great triumphs of the broadcast media that they have made this possible. There can be no doubt that in the distillation of an informed public opinion such appearances play a very basic role.

But if the words and views of the President become a monolithic force, if they constitute not just the most powerful voice in the land but the only one speaking for a nationwide point of view, then the delicate mechanism through which an enlightened public opinion is distilled, far from being strengthened, is thrown dangerously off balance. Public opinion becomes, not informed but instructed, and not enlightened but dominated.

To minimize the risks of imbalance and to treat opposing views on public issues fairly, our approach at CBS is on three fronts. First, in our regularly scheduled news broadcasts we provide continuous opportunity not only for the views of the administration, whose actions make news, but also for the views of those, frequently making news in Congress, as well as others, who have different views. Second, we present extensive and in-depth additional coverage of points at issue -- on the regularly scheduled Tuesday evening CBS News Hour, on FACE THE NATION, or on specially scheduled pre-emptive broadcasts the format of which provides for the expression of views not limited to dissent along partisan lines.

Third, we have adopted a "Loyal Opposition" concept, under which from time to time during the year CBS and its affiliated stations will provide the principal opposition party free prime network time to present its views in any way it sees fit. It is about this concept and the role it can play in contributing towards an enlightened opinion that I would like to talk with you briefly.

The Loyal Opposition Concept The fundamental reason behind this decision -- which, by the way, is merely an application of a long-standing CBS policy to give the public a fair opportunity to have the views of the party out of executive power -- is simple and obvious: we live in a two party system. Both of the parties represent broad cross sections of the American people. They represent all regions of the country. Each has within its ranks conservatives and liberals. Each has members holding major state and local offices as well as Federal offices. Each speaks for millions of our citizens, not merely on a single or a dominant issue, but on all issues -- foreign and domestic, economic and social, civil and military. Both parties,

too, have a strength generally unknown in the political parties of other nations: both parties accommodate very wide ranges of views, the differences within them often being as great as the differences that divide them. Although this characteristic has been of saving uniqueness to the American political experience, because it has rendered splinter parties unnecessary, it has also posed the problem of who speaks for the parties -- a problem which we at CBS had to face in offering time to the opposition party.

In the case of the party in executive power, this is not a problem. Obviously the Presidency of itself is of preemptory power in partisan politics, and the President speaks for his party. It is inconceivable that his party would require time to differ with him. In the case of the party out of executive power, however, there is no one government official who, because of the office he holds, speaks with the same authority for the party out of power as a whole that the President does for his party. Congressmen and Senators represent their constituents, and not their party, in their duties -- and those constituencies, unlike the constituency of the Presidency, are formed of state and local bodies rather than one national in scope. Further limiting the role of Congressional leaders as national party spokesmen is the fact that some states very often have delegations that include no members of the opposition party. In the present Congress, four states -- Delaware, Kansas, Nebraska and Vermont -- have no Democrats in either house; seven -- Arizona, Colorado, Illinois, Kentucky, New York, Oregon and Pennsylvania -- have none in the Senate; and eight more have none in the House -- Alaska, Idaho, New Hampshire, New Mexico, North Dakota, South Dakota, Utah and Wyoming.

In view of these facts, the one place in which logically to put responsibility for speaking for the opposition party -- or for deciding who

should speak for it -- is that party's National Committee. This is what we at CBS decided to do. And it seems to me to conform with the facts of political life.

The Role of the Congress Suggestions that, as in the British system, the legislative opposition should constitute the party spokespersonship seem, on the contrary, based on an inexact parallel and to be in conflict with the clear intent of our constitutional doctrine of the separation of powers as a safeguard against parliamentary government with its inevitable dangers of unpredictability. In Britain, the principal party out of power is continuously organized under a "shadow cabinet" and functions as a formal and disciplined opposition. It has a designated leader, who speaks with undisputed authority for his party, who is the Prime Minister's accepted counterpart, and who would in all probability succeed him should his government fail. Thus, the chief executive in England always comes directly from the Parliament and, in fact, remains a member after he becomes Prime Minister.

This is not the case either in theory or in practice in the United States. Theoretically, the Constitution specifically separates the legislative and executive powers. In actual practice, only twice in the 17 times that the Presidency has passed from one party to another did the incoming President come directly from the Congress, the cases of Harding and Kennedy being the only examples. Of the other 15, only one, Jefferson, held Federal office, four of them being Governors and the majority -- 10 -- holding no public office at all when elected.

This is not to say that Representatives and Senators of either party, whether or not opposed to the President and whether or not in control of

the Congress, should not be heard as frequently on the issues before the country as events or their activities and influence justify. In the case of CBS, such appearances are the rule rather than the exception not only on hard news broadcasts but in special interviews and in panel discussions. On FACE THE NATION, during the first 18 months of the present Congress, out of 46 broadcasts involving Federal officials, 27 came from the Congress, as compared to 19 from the executive branch. Moreover, if the National Committee of the opposition party should designate Senators or Representatives as its spokesmen during campaigns, we would have no objections providing those of our affiliates on whom this would impose a Section 315 burden were given sufficient time to exercise their options -- that is, not to carry The Loyal Opposition broadcast, or to offer equal time to the Senators' or Representatives' opponents, or to secure waivers.

Recently a proposal was made to amend the Communications Act of 1934 to require broadcasting licensees to "provide a reasonable amount of public service time to authorized representatives of the Senate of the United States, and the House of Representatives of the United States, to present the views of the Senate and the House of Representatives on issues of public importance." The proposal obviously relates not to hard news, news interviews or similar broadcasts where -- as I have noted -- Federal legislation frequently appears. Rather this proposal contemplates turning over time to the Federal legislators for their own use. This institutional approach to hearing from the Congress is, I think, one of those propositions that seem highly plausible until you really look at it. What are the views of the Congress? Are they arrived at by how the Congress votes? Are they the views of the majority and of the minority as such? Are they the views of the committees to whom specific legislation is referred? Are they the views of the policy committees?

And who would speak for an institution not conspicuous for its unanimity of expression even in the rare cases when there is near unanimity of view? Do the Speaker of the House and the President Pro Tempore of the Senate speak for all the members of their respective houses or only for the majority in each case? Would not the minority leaders and minority

whips then want a voice -- followed by the majority leaders and the majority whips? Would the chairmen of 59 joint, standing, select and special committees not insist on addressing themselves to the legislation referred to their committees -- followed by the 59 ranking minority members of those committees? Would not then the sponsors of specific bills demand to be heard -- followed by the opponents? Woodrow Wilson once said of the House that it "has as many leaders as there are subjects of legislation." Under the fairness principle, it has twice as many, for certainly no broadcast representing itself as presenting "the views" of Congress could fail to give the views of opponents of legislative acts. And of the Senate, Daniel Webster said, "This is a Senate, a Senate of equals....not an arena for the exhibition of champions." In short, the only views of Congress are the views of its individual members -- 535 of them. Even presenting two at a time, it would take a broadcast every day including weekends for over eight months to present "the views of the Senate and the House of Representatives."

More recently, in yet another of the endless proposals to commandeer television time, the criterion suggested for "requiring" networks to provide time was that the recipients be "any substantial group of Senators opposing the President's views." Fourteen out of 100 Senators represented themselves as the first "substantial" group. By this quantitative standard, the Senators opposing virtually every administration-sponsored bill would constitute a "substantial group," since relatively few bills pass the Senate by a majority of 86 or more. And would not "substantial groups" of Representatives immediately seek a similar provision? If the same percentile factor were employed, this would mean that any 60 out of the 435 members of the House of Representatives could claim the time -- with any number of combinations



making up the 60 providing only that they oppose the President. The proposal is obviously wholly untenable.

The Role of the National Committees As for the appropriateness of making time available to the National Committee, the Committee does represent the party as a whole. Every state has representatives on it and a voice in its procedures and decisions. The Chairman speaks from a position organizationally representing the whole party. He and the National Committee, theoretically at least, are interim custodians of the party platform -- the only set of principles and priorities formally adopted by the entire party. Finally, the National Committee and its Chairman are ordinarily the last remaining political agencies readily available for consultation to the losing candidate for the Presidency.

Some concern has been expressed that by limiting the offer of time to the "principal opposition party," the contributions of third parties to our political life would be neglected or impeded. At CBS -- and I am sure that this is true of other broadcasting organizations -- we have always recognized the significance of third parties. They have often been influential correctives to the directions or emphases of the major parties. Historically, they have been the progenitors of the principal parties. On several occasions, they have been the decisive factor in the outcome of elections.

Despite the very real part that third parties have played, however, they are the great variables in American national politics. Their durability is necessarily uncertain, either because they take their main stand on a single issue, frequently lacking permanent significance, or because they respond primarily to a single set of events or to a single set of attitudes. In some years, for example, a conservative third party is of special significance and in other years a liberal party. For these reasons, it is absolutely

essential that the options remain open for all news media to cover third parties in the context of the atmosphere and events of specific campaigns.

No news organization interested in, if nothing else, its own survival would or could ignore the impact of third parties when that impact becomes apparent to the professional journalist. The record of broadcasting in the United States with regard to significant third parties seems to me to attest quite convincingly to the opportunity the public has had to hear their views and to the fairness with which those parties and their candidates have been afforded opportunities to express their views. But this situation does not exist between elections when frequently the most important of third parties are not even sure whether they will offer candidates and a platform of their own, support a major party or sit the campaign out. There is, in any case, no implication in the CBS offer to the principal opposition party that when events justify it third parties will not also be given appropriate opportunity to present their cases.

Selling or Mandating Time Some have contended that a better policy would be to sell time to political parties, rather than to provide it free. But we believe there are persuasive arguments against this. One is the advantage that automatically accrues to the party with the largest war chest. Another is the urgent matter of the public interest: if time could be bought without limit and indiscriminately at any period by any politician or party who could afford it, the result would not be the enlightenment of public opinion but its oppression. It would result in a public bored to death and a medium crippled by permitting it to happen.

Finally, it has been supposed that if it is desirable for CBS to make an offer of free time to the principal opposition party, it would be even

more desirable if all broadcasters were required by law to provide such time. I think that this is wholly specious reasoning. As a matter of fact, the experience of Section 315 has clearly demonstrated that attempts to regulate in this area defeat their own purpose. Legislative or regulatory action would certainly defeat our very purpose in having chosen this path, individually and not in response to government, party or industry pressures. We do not think that it is the only path. We are not even sure that it is the best path. But it is one path to ensuring that public opinion, the foundation of action in a free society, is formed on the basis of a balanced presentation of national political viewpoints -- a balance that cannot be achieved by any one device, legislative or administrative in its inception, that locks all broadcasters into a single approach to this problem.

The Need for Pluralism There is no technique, no stratagem, no instrument by which law or regulation can create by fiat or by formula an enlightened public opinion. It has to rise from a multiplicity of sources of information, a multiplicity of articulated views and a multiplicity of methods of conveying that information and of circulating those views. Whenever all the media, or all the elements within a medium, are required to do the same thing in the same way, that multiplicity is reduced, and the likelihood of an enlightened public opinion is diminished.

I am sure that everyone in this room would be profoundly disturbed if unanimity of either matter or manner were imposed on editorials by anybody or any agency, public or private, for any reason whatsoever. At CBS, in fact, we don't even know what editorial positions the managements of our owned stations are going to take on any issues until they are taken, and more than once they have been in disagreement with one another. This pluralism, when

multiplied by all the broadcasters in radio and television and by all the publications and other forums in other media, is the only safeguard of a free society. For it is the sole effective guarantee that the public has the opportunity to arrive at its opinion only after it has had all the facts and after all the views interpreting and appraising those facts that merit a hearing are made available.

In making our time offer to the principal opposition party, we were not seeking to create a pattern for all broadcasting. We hope our counterparts will seek to achieve the same effect in different ways. Our purpose was -- and remains -- to provide for the addition to the national dialogue of a voice of responsible dissent or difference that represents a major body of political thought.

I hope that I have not imposed at too great length upon your time. If I have, it is only because of my awareness of your professional devotion to the construction of a lively, informed public opinion in America. You could hardly be devoting your energies and your talents to a more essential cause -- a cause into which one of the ablest commentators on our political processes -- Lord Bryce in his now classic The American Commonwealth -- showed remarkable insight, when he concluded:

"Of all the experiments which America has made, this endeavouring to govern by public opinion is that which best deserves study, for her solution of the problem differs from all previous solutions, and she has shown more boldness in trusting public opinion, in recognizing and giving effect to it, than has yet been shown elsewhere. Towering over Presidents and State governors, over Congress and State legislatures, over conventions and the vast

machinery of party, public opinion stands out, in the United States, as the great source of power, the master of servants who tremble before it."

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C.

In Re:

Petition of The Republican National  
Committee for Relief Against CBS

REPLY OF THE REPUBLICAN NATIONAL COMMITTEE  
TO CBS RESPONSE

Counsel:

W. Theodore Pierson  
Pierson, Ball & Dowd  
1000 Ring Building  
Washington, D.C. 20036

July 30, 1970

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C.

In Re: Petition of The Republican National  
Committee For Relief Against CBS

REPLY OF THE REPUBLICAN NATIONAL COMMITTEE  
TO CBS RESPONSE

This pleading is filed in behalf of the Republican National Committee (RNC) in reply to the response to the subject Petition filed by CBS under the date of July 23, 1970.

The "Which Party" Issue Is New  
And Was First Raised By Mr. O'Brien

At the very outset, we would like to make the position of RNC clear beyond doubt.

First, we submit that the O'Brien broadcast was in total effect a thirty-minute commercial designed to persuade viewers that President Nixon and his party had performed badly and, therefore, the viewers should cast their votes for and send their money to Democrats. The stark issue was which party the public should vote for and support financially.

The O'Brien format was to take tapes and quotes from President Nixon's previous appearances, treat them as promises, and then attempt to show that the performance had not matched these promises. Primarily, his treatment



of other issues and problems <sup>1/</sup> was to acknowledge their existence and assert that the President had not solved them, all of which led up to the following punch-line:

"The Democratic Party and the Democrats in Congress accepted that challenge a decade ago -- and we rededicate ourselves today".

And after that the following message:

"For more information concerning the Democratic Party's alternatives to the policies of the Nixon Administration, write: Democrats, Box 3456, Washington, D.C. 20010".

Then, after five minutes of commentary, there was an appeal to the viewers to send in money for the clear and ostensible purpose of ousting the Republican Party from power.

CBS appears to contend that the partisan issue of "which party" was raised first by the Presidential appearances on television -- that his very appearance before the camera raised the "which party" issue even though his words and format were non-partisan and not to any significant degree devoted to the past or present failures of Democratic officeholders or to extol the virtues of their Republican counterparts. CBS is wrong.

The issue of "which party" is new and was raised by Mr. O'Brien's 30-minute commercial. To repeat, the President has not used his appearances in any significant measure to compare the performances of Democratic and Republican officeholders as a persuader to support Republicans. <sup>2/</sup> He has not raised that issue. Mr. O'Brien has. Fairness Doctrine balance requires response by the only appropriate spokesman: RNC.

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<sup>1/</sup> While Mr. O'Brien recited the problems facing the nation, on nearly all such issues he was remarkably neutral and presented firm convictions almost solely on the issue of "which party".

<sup>2/</sup> CBS's position in this respect is dramatically opposed to the stance it took in 1949 when it contended that the non-political appearance of Governor Dewey in a "Report to the People of New York" could be distinguished from his partisan activities and the subsequent denial of time to the New York State Democratic Committee. Paul E. Fitzpatrick 6 R.R. 543 (1949).

The apparent contention of CBS that Presidential appearances, without more, inevitably raise the "which party" issue totally ignores reality. The O'Brien partisan diatribe against the President is a style that simply cannot be adopted, except in very rare instances, by the President in his official appearances. In his reports to the people he must be concerned that his words, both in tone and substance, have the desired effect upon foreign governments, upon the armed forces he commands (which includes both Democrats and Republicans), and upon Republican and Democratic legislators upon whom he must depend to advance his legislative programs.

Since the New Deal Years, every President has needed the support of the members of both parties in order to effect his programs. This for at least two reasons: (1) since 1946, in only 7 Congresses has the President's party been in control of both Houses and (2) legislation is almost always regarded as conservative, moderate or liberal in nature, which criteria, much more than Republican or Democratic, describe the true policy divisions on the "Hill". If he attacks liberal oppositions to his programs, he attacks Republicans as well as Democrats. If he attacks conservatives, he similarly attacks members of both parties. If he attacks Democrats, qua Democrats, he attacks liberals, moderates and conservatives.

Thus, in his statements concerning the conduct of foreign affairs, his command of the armed forces and in his relationship with the Congress as a coordinate branch of government, a president in the great bulk of his television appearances must abjure "sharp and partisan attacks" -- diatribe is rarely a fitting style. Quite beyond his control, he is cast into a matrix which only

infrequently permits such style. One shudders at the implied suggestion of CBS that the Inaugural Address, the reports to the nation on Vietnam and Cambodia, The Address to the U.N. General Assembly, the State of the Union messages, the Report to the Nation on the Postal Strike were or could have been employed by the President as vehicles for "sharp and partisan attacks" upon the Democratic Party. And unless they were such, they did not pull a Fairness Doctrine trigger for the "sharp and partisan attack" of Chairman O'Brien. The latter raised that issue -- the issue of "which party" -- an issue which had not and could not have been raised in any significant way by the Presidential appearances.

The Fairness Doctrine is an issue-oriented doctrine. It is the putting forth of an issue, not the appearance of a person, that invokes the requirement of balance. The issue of which party to support with votes and money was first put forth by Mr. O'Brien. CBS has not balanced it as the Fairness Doctrine requires. CBS must balance this appearance with an appropriate spokesman on the other side, and we have urged that the spokesman ought to be RNC. This requires no expansion of the Fairness Doctrine as CBS contends. All that is required is its intelligent and just application.

#### CBS Has Incorrectly Characterized Our Position

We wish to correct some further inaccurate characterizations of our position advanced by CBS in its response.

CBS states that the RNC Petition "claims that CBS has gone too far". As much as RNC faults the judgment of CBS, we did not ask the Commission, nor would we in the interest of journalistic freedom, to reverse the CBS judgment and order it to go less far. We merely asked the Commission to hold that CBS;

having gone this far, must under the Fairness Doctrine take the further step of allowing a response to the naked partisan DNC attack by an appropriate spokesman: RNC.

We agree with CBS that it was not violating the Fairness Doctrine by granting time to DNC. But we contend that the doctrine is violated by CBS's refusal to grant RNC the right to respond to the bald partisan issue of "which party" newly-raised by Mr. O'Brien's 30-minute DNC commercial.

The question is not as CBS says "whether the Commission should expand the Fairness Doctrine"; the question is whether the Commission should apply and enforce that Doctrine.

We agree with CBS that "Partisan political discussions both by and against a current administration are a long-standing and, we believe, healthy aspect of the American political system". But we did not suggest, as CBS claims, that it prohibit the broadcast of such discussions "because they were sharp or partisan". On the contrary, we urged that CBS balance the sharp and partisan broadcast by Mr. O'Brien with a sharp and partisan broadcast by his Republican counterparty -- thus to have a debate instead of a soliloquy on the issue of "which party". It was the muzzling of RNC about which we complained to the Commission -- not CBS's failure to muzzle DNC.

National Committees Are Not Authorized  
To Speak For Their Parties On Policy  
Issues And Are Therefore Inappropriate Spokes-  
men To Respond To Policy Issues Raised  
By Presidential Appearances.

CBS has incorrectly stated in its response that "Between the period of national conventions it [the national committee] may be fairly said to be the only authorized spokesman for the party". Indeed, national committees are not only not authorized to speak on policy matters for the party but, both conceptually and empirically, they are inappropriate spokesmen to respond to the national issues raised by President Nixon's appearances.

The function of a national committee of a major national party is chiefly administrative and financial. It does not determine or enunciate party policy

"Its most important duty -- to supervise the presidential campaign -- is performed by the national chairman (q.v.) It determines the place and date of the national convention, issues the call, chooses a temporary chairman, makes up a temporary roll of delegates, and performs other duties imposed by the convention". 4/

"Essentially the national chairman is a kind of business agent for his party -- intent upon strengthening the central structure, recruiting new workers, smoothing the ruffled feathers of quarreling factions, and preparing the organization for the next campaign. Between Presidential

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3/ "The national Committee derives its authority from the national convention which gives it no mandate to function as a policymaker between conventions V.O. Key, Politics, Parties, and Pressure Groups 318 (5th ed. 1964).

4/ Smith and Zurcher, Dictionary of American Politics 254 (1955).

campaigns, he has powerful rivals in the Campaign Committees of the Senate and the House". <sup>5/</sup>

This correct conceptual view of the functions of the national committees is reflected in their composition. Elected officials, past and present, comprise only a small minority of their membership. <sup>6/</sup> The great bulk of their membership, of necessity in view of their non-policy functions, is composed of acknowledged performers in raising money, getting out the vote, organizing and managing conventions and handling public relations. The typical attitude of national committee members, to paraphrase an old saw, is "My party, right or wrong, but still my party". Issue-oriented policy-makers or spokesmen they are not -- and most emphatically cannot be.

The catalogue of duties and powers of either DNC or RNC does not include spokespersonship for the party as even one of its functions. <sup>7/</sup> This, of course, is due to the-party-everything attitude their tasks require and to the fact that serious questions have been raised as to the representative nature of the national committee vis-a-vis the people for whom it purports to speak when it speaks. <sup>8/</sup>

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<sup>5/</sup> Odegard & Baerwald, The American Republic 173 (1964).

<sup>6/</sup> An examination of the published rosters of RNC and DNC and the 1970-71 issue of Who's Who In America indicates that, in the case of each committee, only about 9% of the membership now holds and no more than 35% has ever held elective office. 35 Marquis, Who's Who In America, 1970-71 (1970).

<sup>7/</sup> See generally, Rules of Democratic National Committee, Art. I; Rules Adopted by Republican National Committee, Aug. 5, 1968.

<sup>8/</sup> Sen. George S. McGovern, Mandate for Reform, A Report of the Commission on Party Structure and Delegate Selection to the Democratic National Convention, April, 1970. Note particularly the varying methods of selection of delegates to the national convention. Id. at 56-63.

The reverse of this is also true in that national committees do not speak for the President on policy matters. For example, at the present time, there are a large number of issues with respect to which the President has taken a firm stand and with respect to which RNC has remained silent precisely because of the division of opinion among its constituents. A noteworthy past example is the case where, in the summer of 1969, the President had made a firm commitment with respect to ABM -- a course with respect to which many of the members of his party disagreed. RNC, in view of this division within the party, announced that it would not be active in supporting the President's position on the ABM issue.

It is for this reason that (when either is the out-party) the Democrats and Republicans establish groups other than the national committee to speak for each of them on public controversial issues.

Thus, in January, 1969, at the urging of defeated candidate Humphrey, a Democratic Policy Council of nationally prominent Democrats was created by DNC to speak for the opposition during the Nixon years. Headed by former Vice President Humphrey, its membership included 3 Senators, 3 Congressmen, 3 Governors, 2 Mayors and 3 DNC Committeemen. Out of 22 members only 4 were associated with state or national party committees. This not only contradicts CBS's statement that DNC is the "only authorized spokesman" but the establishment of the Council would have been a ridiculously superfluous act if DNC had been even a recognized spokesman on the myriad controversial issues facing the nation. And over the years the jealousy of Congressional leaders of the out-party over who speaks for the party is a fact so notorious that it



hardly requires citations. <sup>9/</sup>

In a similar manner, through the Kennedy and Johnson years, and at the instance of former President Eisenhower, a group known as "The Joint Senate-House Republican Leadership" was established. During its existence between 1961 and 1969 the Leadership Group held many press conferences on the issues of the day which are published in 8 Senate documents <sup>10/</sup> and which received extensive media coverage, including television.

In 1965, again confronted with the problems of the out-party, still another Republican leadership group was formed under the name of "Republican Coordinating Committee" which could speak as a united and constructive voice on the perplexing and urgent problems of" the period. The Committee consisted

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<sup>9/</sup> Probably the most heated objections from the Congress came in 1957 when a Democratic Advisory Council was established and was vigorously opposed by then-Senate Democratic Leader Johnson and then-House Speaker Rayburn. New York Times, May 4, 1957, at 1, Col. 1

<sup>10/</sup> S. Doc. No. 63, 87th Cong., 1st Sess. (1961).  
S. Doc. No. 158, 87th Cong., 2d Sess. (1962).  
S. Doc. No. 52, 88th Cong., 1st Sess. (1963).  
S. Doc. No. 107, 88th Cong., 2d Sess. (1964).  
S. Doc. No. 68, 89th Cong., 1st Sess. (1965).  
S. Doc. No. 118, 89th Cong., 2d Sess. (1966).  
S. Doc. No. 61, 90th Cong., 1st Sess. (1967).  
S. Doc. No. 110, 90th Cong., 2d Sess. (1968).

of former President Eisenhower and all other Republican presidential nominees, Republican leaders in the Congress, members of the Republican Governors Association, the Chairman of the Republican State Legislators Association, and six members of RNC. The then-Chairman of the RNC acted as the Presiding Officer. This further contradicts CBS's "only authorized spokesman" premise and constitutes further empirical evidence that the national committees are inappropriate as party spokesmen on the issues of the day.

While a licensee has broad discretion in selecting an "appropriate spokesman", that discretion must be exercised reasonably and in good faith. In the light of the foregoing, is it not clear that it was not reasonable for CBS to regard DNC as an appropriate spokesman on the policy issues raised by the President? <sup>13/</sup> And does not Mr. O'Brien's issue-ducking performance conclusively confirm his inappropriateness for the task? If CBS refuses to purge itself of the illusions it entertained about DNC it cannot be held to be proceeding in good faith.

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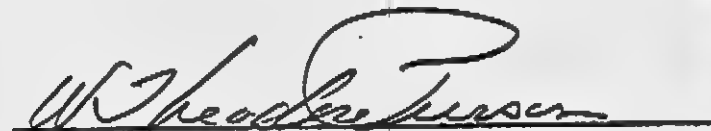
<sup>12/</sup> Ray C. Bliss, RNC Press Release, July, 1968.

<sup>13/</sup> See Golden West Broadcasters (Station KTLA), 8 FCC 2d 987 (1967).

Conclusion

The relief sought by RNC in the subject Petition should be granted.

Respectfully submitted,



W. Theodore Pierson  
PIERSON, BALL & DOWD  
1000 Ring Building  
Washington, D.C. 20036  
Attorneys for

THE REPUBLICAN NATIONAL COMMITTEE

July 30, 1970

CERTIFICATE OF SERVICE

I, JOSEPH F. MILLER, do hereby certify that I have this 30th day of July, 1970, delivered by hand copies of the foregoing "Reply Of The Republican National Committee To CBS Response" to:

Joseph DeFranco, Esq.  
2020 M Street, N.W.  
Washington, D.C.  
Counsel for the Columbia Broadcasting System, Inc.

Roger J. Wollenberg, Esq.  
Wilmer, Cutler & Pickering  
900-17th Street, N.W.  
Washington, D.C.  
Counsel for the Columbia Broadcasting System, Inc.

Joseph A. Califano, Jr., Esq.  
Arnold & Porter  
1229-19th Street, N.W.  
Washington, D. C.  
Counsel for the Democratic National Committee

  
JOSEPH F. MILLER

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 70-881  
52120

In re Complaints of )

COMMITTEE FOR THE FAIR BROADCASTING )  
OF CONTROVERSIAL ISSUES, against )

COLUMBIA BROADCASTING SYSTEMS, INC., )  
(WCBS-TV, Channel 2), New York, N.Y., and )

BROADCAST-PLAZA, INC. )  
(WTIC-TV, Channel 3), Hartford, Connecticut )

FOURTEEN UNITED STATES SENATORS, Against )

NATIONAL BROADCASTING COMPANY, INC., )  
COLUMBIA BROADCASTING SYSTEMS, INC., and )  
AMERICAN BROADCASTING COMPANY, INC. )

BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE (Los )  
Angeles Chapter), against )

NATIONAL BROADCASTING COMPANY, INC., )  
COLUMBIA BROADCASTING SYSTEMS, INC., )  
AMERICAN BROADCASTING COMPANY, INC., and )  
Stations KNXT, KABC-TV and KNBC, Los Angeles )

In re Petition of )

REPUBLICAN NATIONAL COMMITTEE )  
for Relief Against )

COLUMBIA BROADCASTING SYSTEMS, INC. )

In re Complaint of )

ELEVEN UNITED STATES SENATORS against )

NATIONAL BROADCASTING COMPANY, INC. )

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 1970

Released: August 18, 1970

By the Commission: Commissioners Burch, Chairman and Robert E. Lee issuing separate statements; Commissioner Bartley dissenting; Commissioner H. Rex Lee dissenting and issuing a statement; Commissioner Johnson concurring and issuing a statement; Commissioner Wells not participating as to Dale Petition.

1. The Commission has before it a series of separate complaints and petitions relating to alleged violations of the fairness doctrine by various television networks, their owned and operated stations and individual

network affiliated stations in their coverage of issues relating to the war in Southeast Asia (also referred to as the Indochina War). 1/ We will first summarize the issues raised by the pleadings and then turn to discussion of the matters raised.

#### Summary of Pleadings

2. The Committee for the Fair Broadcasting of Controversial Issues (Committee) filed a "Complaint, Petition for Issuance of Order to Show Cause to Cease and Desist and Request for Expedited Disposition" on May 25, 1970, directed against stations WTIC-TV, Hartford, Connecticut, and WCBS-TV, New York City, for violation of Section 315 of the Act and the Commission's fairness doctrine. Specifically, both stations are alleged to have failed "to afford a fair and reasonable opportunity for the balanced presentation of the contrary views when the President of the United States addresses the Nation on television on the Administration's policies in Southeast Asia." 2/

3. The Complaint: Between November 3, 1969, and April 30, 1970, the President presented his views on the war in Southeast Asia (including the issues of the origins of the war, the alternative courses of action available, "Vietnamization," rate of U. S. troop withdrawal, American incursion into Cambodia) on four separate occasions 3/ with wide prior publicity. The speeches were broadcast during prime time and

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1/ The pleadings before the Commission are listed in the attached Appendix.

2/ Committee for Fair Broadcasting did not initially contact WCBS-TV and WTIC-TV to ascertain their plans for future coverage of the issue. Such prior contact between complainants and licensees is strongly encouraged to ascertain whether a controversy exists and to sharply narrow and delineate the issues involved. (See Fairness Primer, 29 Fed. Reg. 10416 at Part I.) In the case of the Committee's complaint we will consider the matters raised because of the similarity to the complaints of the Amendment to End the War Committee and the Business Executives Move for Vietnam Peace where the normal prior consultation procedures were followed.

3/ In the November 3, 1969 speech, the President discussed the historical background of American presence in S.E. Asia, outlined the "Vietnamization" program, including troop withdrawals and training progress of Vietnam army and the course of negotiations. On December 15, 1969, the President presented a "progress report" and announced 50,000 American troops would be withdrawn. On April 20, 1970, the President gave another "progress report"

(continued on next page)

varied in length from 15 to 30 minutes. The President entertained no questions before, during or after the speeches; the presentations were not interrupted in any other manner; and the President's remarks were broadcast live and complete. The Committee contends that neither WTIC-TV nor WCBS-TV has presented any program which presented contrasting viewpoints on the issues the President addressed and which received significant prior publicity, was broadcast nationwide on network owned and operated and affiliated stations during prime time and had the same uninterrupted orderly exposition on a single issue or set of issues. The Committee contends that the programming concerning the Vietnam-related issues presented by WTIC-TV and WCBS-TV is, in and of itself, balanced. 4/

4. The Committee asserts that its members, as part of the listening public of WTIC-TV and WCBS-TV, have not been given reasonable opportunity to effectively hear the presentation of conflicting views on issues of public importance in accordance with their rights as set forth in Red Lion Broadcasting Co., Inc. v. F.C.C., 395 U.S. 367 (1969), Controversial Issue Programming--Fairness Doctrine, 3 RR 2d 163 (1964), and Editorializing by Broadcast Licensees, 13 FCC 1246 (1949). Petitioner emphasizes that its request is not intended to inhibit television coverage of Presidential speeches, but rather to insure that licensees fulfill their "conscious and positive role in bringing about balanced presentation of the opposing viewpoints." Editorializing Report, supra, at 1251 (paras. 9, 13). The Committee asserts that WTIC-TV and WCBS-TV have failed to comply with the fairness doctrine, notwithstanding the wide discretion permitted the licensee to choose the precise means of achieving compliance bound by standards of reasonableness and good faith. The Committee's argument is that the licensees acted unreasonably by failing to exercise the discretion afforded them and thus not attempting to present any program in conflict with the views expressed by the President. The licensees' performance, the Committee asserts, demonstrates a failure to undertake the affirmative responsibility necessary to meet "minimal standards of fairness." The fairness violation, the Committee argues, has been repeated through the

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3/ (continued from preceding page):  
on the Vietnam situation, spoke of the "substantial increase" of enemy activity in Laos and Cambodia and announced an additional troop withdrawal of 150,000 in the next year. Finally, on April 30, 1970, the President announced the entry of American troops into Cambodia. The Committee's pleading was filed prior to the President's speech of June 3, 1970.

4/ E.g., Face the Nation--10 guests favoring Administration policy and 8 opposed; documentaries are internally balanced with both proponents and opponents included in each show.

5/ The licensee is ultimately responsible for assuring that fairness is achieved over the station's facilities; whether this is done through local or network programming is of no moment insofar as the individual station's compliance is concerned.



series of Presidential speeches presented by each station. The Committee seeks issuance of an order to show cause why the Commission should not require the stations in question to cease and desist from their violation and failure to observe the provisions of Section 315 and the fairness doctrine in their coverage of additional Presidential speeches concerning the Indochina War.

5. In response WCBS-TV and WTIC-TV submit that they have fairly and fully covered the Vietnam War, the Cambodian incursion and the Administration's war policy in their overall programming. Both stations have submitted exhibits showing extensive news, discussion, interview and documentary coverage of the issues cited by the Committee and contend that their performance cannot be assessed simply in terms of their coverage of the President's addresses, but must be viewed in an overall, issue-oriented context. Moreover, the stations assert, the Committee's protestations to the contrary notwithstanding, the Committee's complaint represents an attempt to apply the "equal opportunities" concept to the fairness doctrine rather than the "reasonable opportunities" concept which has traditionally prevailed. Such a "radical extension," the stations argue, would be beyond the Commission's authority. Finally, WTIC-TV contends that the Committee's objections go to network programming and thus their relief must come from the same source; 5/ WCBS-TV contends the allegations are too vague and general to demonstrate violation of the fairness doctrine.

6. The Amendment to End the War Committee and Fourteen U. S. Senators, 6/ have filed a complaint alleging violation of the fairness doctrine by the three major television networks and their owned and operated stations in their coverage of the President's speeches on the war in Indochina. The Senators are all sponsors of Senate Amendment No. 609, the "Amendment to End the War." The President's five speeches on the Indochina war since November 1969, represent a "series" of programs, 7/ petitioners state, which have not been balanced by a "similarly effective presentation of the views of the major Congressional opponents of the President's war policy." Petitioners argue that the President's speeches have presented one side of controversial issues of public importance (e.g., Presidential power to conduct the war; role of Congress in making foreign policy;

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6/ Harold E. Hughes (D-Iowa); George McGovern (D-S.D.); Mark O. Hatfield (R-Ore.); Charles E. Goodell (R-N.Y.); Alan Cranston (D-Calif.); Birch Bayh (D-Ind.); Frank Church (D-Idaho); Thomas F. Eagleton (D-Mo.); Mike Gravel (D-Alaska); Fred R. Harris (D-Okla.); Philip A. Hart (D-Mich.); Edward M. Kennedy (D-Mass.); Lee Metcalf (D-Mont.); Gaylord Nelson (D-Wisc.).

7/ Petitioners term the President's speeches a "series within the definition used in the Commission's Notice of Proposed Rulemaking, Docket No. 18359, 35 F.R. 7820 (1970) "a series of broadcasts . . . more than one within a reasonably close time period (from 6 - 9 months or less).

criticism of Senators opposing the President's war policies; criticism of the McGovern-Hatfield Amendment and the conduct and progress of the war). In sum, petitioners raise the same type of objection raised by the Committee for Fair Broadcasting (paras. 2-5, supra)--i.e., the simultaneous dissemination of the President's uninterrupted views by the three major networks in prime time cannot be offset by the internally balanced programs, fragmented news presentations regularly broadcast by the networks and the structural interview programs which do not permit participants to deliver prepared statements of position.

7. Petitioners stated that all three networks have refused the request of the Fourteen Senators for free prime time to respond to the President and have also refused to sell time for that purpose. 8/ Petitioners request that the Commission "require networks to provide time to any substantial group of Senators opposing the President's views on a controversial issue of national importance whenever the issue is one in which the Senate has a role to perform in seeking resolution of the issue, and the President has initiated debate via national television." 9/ Petitioners state that they recognize that some inequity in responding to the President will exist and therefore do not request simultaneous three network prime time--they would accept individual prime time allocations from each of the three major television networks equalling the frequency of the President's appearances. Commission action is necessary, petitioners argue, because the broadcast media cannot be expected to mediate a dispute between two branches of the government and determine the

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8/ NBC permitted the Committee to purchase one-half hour on May 12, 1970, but refused the same entity's subsequent request on June 3, 1970. The program produced for the NBC slot on May 12 was later broadcast by some local stations including WTOP-TV, a CBS affiliate. We have considered the question of purchasing time for the presentation of controversial issues discussed in three rulings released Aug. 12, 1970: Friends of the Earth (FCC 70-862), Business Executives Move for Vietnam Peace (FCC 70- 860 ) and Democratic National Committee (FCC 70- 861 ).

9/ The obligation petitioners seek to enforce would not be satisfied by granting time to the "loyal opposition" party--since, it is argued, conflicting views on issues do not necessarily break down on party lines.

amount of coverage which the position of each is given.<sup>10/</sup> In contrast to the complaint of the Committee for Fair Broadcasting petitioners seek response time for themselves and state that the Senators are the most appropriate respondents to the Presidential addresses.

8. Aside from the requirements of the fairness doctrine, petitioners contend that the relief they seek is dictated by the First Amendment which by judicial interpretation precludes private as well as governmental censorship when the avenues of use are controlled by a few private licensees. To support this theory, petitioners rely primarily upon the Red Lion, supra, decision as applying numerous First Amendment cases to the broadcast media. Moreover, petitioners contend that the Senators must appear personally to preserve the First Amendment values involved because of the "impact far beyond the same words spoken by another man" which a Senator's words have. Thus, presentation of the same views by another, "drains from the speech a part of its most important message and best chance to persuade."

9. NBC and CBS (the Networks) have responded to the Fourteen Senators' complaint in essentially the same fashion and by reiterating the arguments advanced in response to the Committee for Fair Broadcasting Complaint (see para.2-5, supra)<sup>11/</sup>. We will therefore summarize only the additional points made: CBS states that in an attempt to maintain fairness, assure balance and in response to the President's increased use of the broadcast media, it has initiated a new series, "Loyal Opposition," to provide "the principal opposition party" an opportunity to present its views on administration policies. CBS criticizes the Senators for seeking the use of the broadcast facilities "... to persuade, while the journalist's function is to inform" CBS maintains that as the President's use of television has increased so has that of his critics. Finally, CBS contends the relief sought by the Senators would result in the substitution of governmental news judgment for that of the licensee--e.g., in determining whether Congress "has a role to perform" in the area, whether the President has "initiated debate" and whether the President is opposed by a "substantial group" of Senators.

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<sup>10/</sup> We agree with petitioners that such mediation is not the function of the broadcast media. However, we similarly believe that it is not the function of an independent governmental agency to make such judgments. Under the system of broadcasting which has developed in this country judgments as to the coverage given any issue is in the first instance left to the licensee to be made on the basis of the substantive contentions involved in the issues being covered rather than upon the identity of the contestants."

<sup>11/</sup> CBS incorporates by reference its comments filed in response to the complaints of the Democratic National Committee and Business Executives Move for Vietnam Peace (BEM) and its comments filed in Docket No. 18859.

10. NBC argues that a right of access to broadcast facilities is "foreign to the fairness doctrine" even if the individuals seeking it are elected representatives. In fact, NBC argues, it would be inconsistent with the fairness doctrine to afford access to favor one group over others as a general policy. NBC also argues that the fairness doctrine does not require comparability of audience (the President commands the attention of a greater share of the audience), format and time slots.<sup>12/</sup> In sum, NBC urges that compliance with the fairness doctrine be left to "the broadcaster who is to exercise his own good faith judgment in determining such matters as the particular formats of programs and the spokesmen for each point of view."

11. Business Executives Move for Vietnam Peace filed a complaint raising questions concerning the networks' compliance with the fairness doctrine stemming from a refusal "to provide time to a responsible spokesman to reply to the address by President Nixon on June 3, 1970." BEM's complaint <sup>13/</sup> raises essentially the same questions as does that of the Committee for Fair Broadcasting (paras. 2-5, supra) and the Fourteen Senators (see paras. 6-10, supra)--i.e., must each network provide a substantial block of uninterrupted prime time and permit the format to be controlled by the respondents to answer the President's presentation of views on controversial issues; and that the opposing presentation should follow immediately after the President has spoken. BEM contends that the

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<sup>12/</sup> NBC has offered a review of its recent Indochina programs which are included in part of our discussion, infra.

<sup>13/</sup> The procedural aspects of BEM's complaint are somewhat confused. On June 3, 1970, the Commission received a telegram requesting that 15 minutes of prime network time be afforded to BEM to respond to the President's June 3, 1970 speech on Indochina. The Commission's staff responded to the telegram on June 8, 1970, with a letter enclosing information on the fairness doctrine and the procedure for filing complaints. Thereafter, the Commission received a letter dated June 3, 1970, complaining of the failure of CBS, ABC and NBC to afford opportunity to respond to President Nixon's speech to BEM or other responsible spokesmen. On June 10, 1970, a second letter was received by the Commission in which BEM stated it was appealing from the negative response from William B. Ray, Chief, Complaints and Compliance. On June 15, 1970, the Memorandum in support of BEM's application for review was received. However since the June 3, 1970 response did not constitute a staff ruling, we will consider BEM's application for review as a complaint against the three networks and their Los Angeles stations.

comparable content and format they seek for contrasting views is required to provide fair and balanced coverage as licensees are required to do under the fairness doctrine and Red Lion. BEM argues that programs produced by the networks (e.g., interview and discussion) are internally balanced and that this type of presentation cannot balance the President's uninterrupted presentation.

12. Specifically, BEM asserts that each of the networks presented approximately 5 minutes of commentary after the President's June 3, 1970 speech, that the commentary merely summarized the speech with little critical commentary and the commentators could not provide fair and balanced presentation for the contrasting point of view. BEM says NBC's June 4th special edition of "Meet the Press" (one hour prime time--with one-half hour devoted to President's position and other half-hour to two U.S. Senators who oppose the President's views) came closest to providing reasonable opportunity for the appropriate presentation of conflicting views, but again it was also internally balanced with both sides appearing. However, BEM still contends NBC was deficient because the opposing spokesmen were not presented on June 3 and the June 4 "Meet the Press" program was balanced. Prior to complaining to the Commission BEM requested that the three major networks and their Los Angeles stations provide BEM or other responsible spokesmen prime time to respond to the President's speech. That request was rejected.

13. NBC in response argues that network coverage of Presidential speeches is traditional and nothing in Red Lion requires the equal opportunity to reply urged by BEM. NBC states that no question of its fairness performance is raised with respect to coverage of the overall issue of the Indochina involvement. The format and choice of spokesmen on controversial issues of public importance is a matter which has always been left to the licensee's discretion and, says NBC, should continue to be so.

14. The Republican National Committee (RNC) filed a petition against CBS for failure to grant RNC network time to respond to the statements broadcast by Lawrence F. O'Brien on behalf of the Democratic National Committee (DNC) on July 7, 1970. RNC states that it has received no reply from CBS but the public statements of the president of CBS indicate that the reply would be negative.

15. The background of the RNC complaint is as follows: the DNC was given 25 minutes on the CBS network on July 7, 1970, to respond to the President's previously broadcast addresses to the nation; CBS states that Mr. O'Brien accepted and in his presentation covered many controversial issues of public importance, all of which had previously been explored in depth by the President and have been covered many times by CBS news and public affairs programs. RNC claims that Mr. O'Brien's appearance was not confined to the Indochina situation 14/ as apparently intended, but was

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14/ Mr. O'Brien, RNC states, devoted only 2 of his 25 minutes to the U.S. involvement in Indochina.



used as a springboard for a "political attack on the President and his party" and addressed mainly the controversial issue of "which political party should hold power," an issue which was not the subject of any Presidential address to the nation. Thus, RNC states that CBS has presented the Democratic side of a controversial issue of public importance--i.e., which political party shall hold power--and must now present the opposing view, that of the Republican Party. On this issue, RNC claims to be the most appropriate spokesman.<sup>15/</sup> As to other substantive issues, RNC challenges the "Loyal Opposition" series that CBS has instituted as not being a proper exercise of a licensee's responsibility to choose appropriate spokesmen for each issue. CBS responds that the "Loyal Opposition" program does not represent an abdication of its responsibility to choose appropriate spokesmen but rather a determination that a representative of the Democratic party is an appropriate spokesman to respond to the President.<sup>16/</sup> CBS also points out that its policy of affording response time to the opposition party was followed in 1963, 1966, 1967 and 1968, when time was afforded to Republican Party leaders to respond to a Democratic President's appearances.

16. RNC contends that CBS' actions in granting the DNC time represents a handing over of its facilities to "partisan control" and it demands that comparable broadcast time be given over to RNC's control. CBS, in turn, argues that it normally attempts to achieve balance in its presentations of important public issues through news and public affairs programs produced by news professionals but that:

"... the President of the United States holds a unique position in American life. As we have previously discussed, his every broadcast utterance is not subject to mechanical "equal time" rebuttals either under the Commission's fairness doctrine or pursuant to CBS policies. At the same time we have concluded that in view of the tremendous importance of television and radio as a medium of communication, and the increasing use of prime time television and radio by the President, it is appropriate to make time available to the principal opposition party periodically to present its opposing views. For this reason we developed the "Loyal Opposition" broadcasts which we will schedule at appropriate intervals when, in our judgment, they would serve the interest of more fully informing the viewing public and promote fairness and balance in our overall

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<sup>15/</sup>RNC contends that national committees of political parties are not policy spokesmen or policy setters and therefore "are not necessarily appropriate spokesmen to discuss specific political, economic and social issues--the 'gut' issues."

<sup>16/</sup> CBS contends that the "loyal Opposition" format is issue-oriented and on each issue the appropriate Democratic spokesmen would be selected.

schedule. This is fully supportive of CBS' policy that the public must be fully and fairly informed and in no way inconsistent with our policy that the bulk of the information broadcast should be presented by our own news organization as the most effective method of informing the public." [Footnotes omitted]

RNC's final contention is that office-holders will be inhibited from reporting to their constituents if each report invokes a partisan attack from his political opponents--thus, creating a situation inimical to the public interest.

17. In reply to CBS' response, RNC reiterates its contention that O'Brien's presentation raised the "which party shall govern" issue by its format and the fairness doctrine requires a balanced response by the only appropriate spokesman: RNC. Moreover, RNC says CBS has mischaracterized its position in that RNC does not claim that CBS has not violated the fairness doctrine but is so violating it if response time is not granted to RNC. RNC says it seeks no change in the fairness doctrine, only the application and enforcement of it by sharp partisan debate.

18. Eleven United States Senators<sup>17/</sup> have requested that the Commission require NBC provide "equal time without cost" for the Senators opposed to the Amendment to End the War (Amendment 609 to H. R. 17123, Military Procurement Authorization Act) to present contrasting views to those expressed on a 30-minute sponsored program, the Amendment to End the War, on NBC-TV on May 12, 1970. NBC declined Senator Bob Dole's request stating that NBC had presented contrasting views on the issue <sup>18/-</sup> citing President Nixon's June 3, 1970 address and other NBC programs broadcast between May 13 and July 9, 1970. Senator Dole contended that NBC had not presented contrasting views on the Amendment itself and NBC responded by stating that views opposing it had been presented and would continue to be presented by NBC--but that "equal time" would not be granted Senator Dole for that purpose.

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<sup>17/</sup> Bob Dole, Barry Goldwater, Clifford P. Hansen, Edward Gurney, Paul Fannin, Carl Curtis, Robert Griffin, Ralph Smith, Gordon Allott, Peter Dominick, and Strom Thurmond.

<sup>18/</sup> Senator Dole's request was made on July 7, 1970, and NBC responded on July 8, 1970. A second request was made by Senator Dole on July 9, 1970, and NBC reaffirmed its position denying the request on July 9, 1970. On July 10, 1970, a complaint was lodged with the Commission.



19. In support of Senator Dole's contention that NBC has not fulfilled its fairness obligations <sup>19/</sup> the following arguments have been presented: the 30-minute program presented by the Amendment to End the War Senators represented presentation of one side of a controversial issue and NBC has failed to present contrasting views which it was obligated to do whether paid sponsorship was available or not (Cullman Broadcasting Co., Inc., 25 R.R. 895 (1963)). Senator Dole requests that NBC afford comparable time to the Senators joining in the complaint to present contrasting points of view. Moreover, the complaint continues, the appeal for funds made on the Amendment to End the War program represented the presentation of one side of another controversial issue and NBC does not "purport to claim that it has presented contrasting views on this matter." Senator Dole's complaint suggests that solicitation may have been the "real purpose" for the program presented. NBC responded in the following manner:

NBC in reply states that NBC has covered the various views on U. S. participation in the war and how to end it, of which the Amendment to End the War is one view. Thus, the program to which objection is raised did not raise an additional controversial issue. Any other approach would splinter discussion of the basic issues. NBC has offered a brief analysis of its recent television programs which indicates that views similar to those of the complaining Senators had been presented on some 24 programs between May 1 and July 15, 1970, not including "hard" news programs. Clearly, NBC states, the public has not been left uninformed. Moreover, NBC intends to continue its presentation of contrasting views on the Indochina issue, including the Amendment to End the War.

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<sup>19/</sup> The complaint of the Eleven U. S. Senators is referred to throughout the document as Senator Dole's complaint.

### Discussion

20. We have grouped all these complaints because, to a significant extent, they all involve a common problem--the discharge by broadcast licensees of their responsibilities under the fairness doctrine in dealing with the Indochina war issue. We recognize that other important issues are also presented in some of the complaints and that even as to the Indochina war issue, the complaints differ in significant aspects and thus call for different treatment as to those aspects. We shall of course afford such different treatment. But it is desirable to set forth in this one document the background discussion which is basic to an understanding of our disposition of these complaints. That discussion follows. We shall then turn to the specific complaints.

#### A. Background Discussion -- The Discretion Afforded Licensees Under the Fairness Doctrine.

21. We have long stressed the different manner in which the "equal opportunities" and fairness requirements of Section 315 operate. The former is applicable only to uses of station facilities by candidates for public office and calls for equal treatment--as to the amount of time to be afforded, the nature of the time slot, etc. It thus works with virtually mathematical precision.

22. The fairness doctrine works much differently. As we stated in our Fairness Primer, 29 Fed. Reg. 10416 (1964):

The fairness doctrine deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance. Generally speaking, it does not apply with the precision of the 'equal opportunities' requirement. Rather, the licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation--as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. See par. 9, Editorializing Report. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the 'equal opportunities' requirement.

23. The areas where the licensee's discretion has been curtailed, chiefly as to selection of the appropriate spokesman, are the personal attack and political editorializing situations. The reasons are obvious and are set forth in our reports and in Red Lion Broadcasting Co. Inc. v. F.C.C., 395 U.S. 367, 378-379 (1969). To a substantial extent, the considerable discretion as to the amount or nature of time to be afforded is also curtailed in these fields. See Clarence F. Massett, 10 FCC 2d 968 (1967); George E. Cooley, 10 FCC 2d 969 (1967).

24. We do not believe that any extended discussion is needed as to why the licensee is afforded so much discretion under the fairness doctrine. In our judgment, based on decades of experience in this field, this is the only sound way to proceed as a general policy. A contrary approach of equal opportunities, applying to controversial issues generally the specific equal opportunities requirements for political candidates would in practice not be workable. It would inhibit, rather than promote, the discussion and presentation of controversial issues in the various broadcast program formats (e.g., newscasts, interviews, documentaries). For it is just not practicable to require equality with respect to the large number of issues dealt with in a great variety of programs on a daily and continuing basis. Further, it would involve this Commission much too deeply in broadcast journalism; we would indeed become virtually a part of the broadcasting "fourth estate," overseeing thousands of complaints that some issue had not been given "equal treatment." We do not believe that the profound national commitment to the principle that debate on public issues should be "uninhibited, robust, wide-open" (New York Times Co. v. Sullivan, 376 U.S. 254, 270) would be promoted by a general policy of requiring equal treatment on all such issues, with governmental intervention to insure such mathematical equality.<sup>20/</sup>

25. On the other hand, we remain firmly convinced that the fairness doctrine is workable and does promote robust, wide-open debate. Again, no extended discussion is needed on this score, in light of the Red Lion opinion, where the Court indicated that the fairness doctrine is not only constitutional but may well be constitutionally required (p.390). Suffice it to say that we regard strict adherence to the fairness doctrine as the single most important requirement of operation in the public interest--the "sine qua non" for grant of a renewal of license (Office of Communications of United Church of Christ v. F.C.C., 425 F.2d 543, 548 (C.A.D.C., 1969); see also Brandywine-Main Line Radio, Inc., FCC 70-686, released July 7, 1970. We have stressed that we have allocated so much

<sup>20/</sup> Indeed, since fairness is required, more time may need to be afforded to answer an attack than the attack itself (e.g., a 10 second attack that an individual is a communist).

spectrum space to broadcasting because of the contribution which it can make to an informed public. See Storer Broadcasting Co., 11 FCC 2d 678. That basic allocation purpose would be largely undermined if the broadcaster could discuss such issues unfairly--by presenting only one side or only the viewpoints with which he agreed.

26. In stressing that the licensee has considerable discretion in discharging his fairness obligation, we do not mean to imply that that discretion is absolute. As stated, we will intervene if the showing establishes that the licensee has acted unreasonably. Under that standard, it is not a question of whether we believe that the licensee has acted wisely or whether we would have proceeded as he did. The issue is not one of substitution of our judgment for that of the licensee on these issues of broadcast journalism, but rather whether the licensee has acted in an arbitrary fashion. Thus, it is patently unreasonable for a licensee consistently to present one side in prime time and to relegate the contrasting viewpoint to periods outside prime time.<sup>21</sup> Similarly, there can be an imbalance from the sheer weight on one side as against the other. But there is no mathematical formula on any of these questions. What is called for is a judgment on the facts of each case, when an appropriate complaint comes before the Commission. See Fairness Primer, 29 Fed. Reg. 10416 (1964).

27. The foregoing principles have been long established and consistently adhered to by the Commission. Thus, they are set out in the Commission's "principle summary" of the fairness doctrine (Red Lion, at pp. 375-386)--the 1949 Editorializing Report (see particularly par. 10). They have been reflected in so many decisions over the last twenty years that citation is impracticable. Their support does not rest in administrative declaration. More important, the statute and its legislative history are to the same effect. Thus, Congress early considered and rejected the notion of equal opportunities for controversial issues. (67 Cong. Rec. 12502-12504). In 1959 Congress codified the fairness doctrine, by inserting the provision in Section 315(a) that broadcast licensees "must operate in the public interest and . . . afford reasonable opportunity for the discussion of conflicting views on controversial issues of public importance." The conference report makes clear that this was a Congressional "restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934" (H. Rep. No. 1069, 86th Cong., 1st Sess., p. 5 (1959)). See also Sen. Rep. No. 562, 86th Cong., 1st Sess., p. 13; 105th Cong. Rec. 14440, 14457, 14462, 17830-31.

<sup>21</sup>/ The licensee has an affirmative obligation to encourage and implement the presentation of contrasting viewpoints. Report on Editorializing, supra at par. 9. The Commission has now under consideration revisions in the doctrine to buttress this affirmative obligation in certain fairness situations. See Notice of Inquiry and Proposed Rule Making, Docket No. 18859, 35 Fed. Reg. 7820 (1970).

And, finally, the Supreme Court's opinion in Red Lion significantly recognizes the Editorializing Report as the statement of the basic principles embodied in the fairness doctrine. See Red Lion, supra, at pp. 384-386.

28. Further treatment of the pertinent background is unnecessary in light of the extensive discussion in the DNC ruling (FCC 70-861, released August 12, 1970). We therefore refer to that ruling, and particularly with respect to the arguments advanced in these complaints that particular persons are entitled under the First Amendment to access to broadcast facilities. As the DNC ruling makes clear, it is the right of the public to be informed on public issues--and not the right of any particular individual or group to speak over broadcast facilities--which is paramount here.

29. Finally, we would note that in view of the foregoing, the fairness doctrine is a term of art. A layman might say that if A got 30 minutes to speak on some issue, it is only "fair" that a spokesman for the other side also get 30 minutes in the same time period. Thus, in such a lay viewpoint, "fairness" would always entail "equal opportunities." But, as shown, that is not the thrust of the fairness doctrine, as developed by the Commission and codified in the law in Section 315. The fairness doctrine does not require equality but reasonableness--that in the circumstances there has been "reasonable opportunity for the discussion of conflicting viewpoints on controversial issues of public importance" (Section 315(a)).

B. The Complaints that a Spokesman be Given Equal Opportunities to Respond When the President has Addressed the Nation on Broadcast Facilities.

30. With the foregoing as background, we turn to the complaints. First, we deal with those complaints which in effect request that an appropriate spokesman be selected to respond, on an equal opportunities basis, to any broadcast Presidential address on a controversial issue of public importance. As stated in the BEM complaint, each network would be required to provide "a substantial block of uninterrupted prime time and permit the format to be controlled by the respondents to answer the President's presentation on views on controversial issues; and that the opposing presentation should follow immediately after the President has spoken" (BEM, p. 9-a). In the complaint of the 14 Senators, it is that "the Commission should require networks to provide time to any substantial group of Senators opposing the President's views on a controversial issue of national importance whenever the issue is one in which the Senate has a role to perform in seeking resolution of the issue, and the President has initiated debate via nationwide television" (14 Senators' complaint, pp. 6-7). From the foregoing discussion and as amplified below, we deny these requests as contrary to the established principles of the fairness doctrine.



31. There is no question but that the fairness doctrine is applicable to Presidential addresses on controversial issues of public importance. See Letter to Republican National Committee, 40 FCC 625 (1964); Letter to Blair Clark, 11 FCC 2d 511 (1963). This means that the broadcaster must afford reasonable opportunity for the presentation of contrasting viewpoints on the issues covered in such broadcasts. But it does not mean that the Presidential speeches must be considered in isolation or that the licensee loses the discretion afforded him under the fairness doctrine as to the manner in which he achieves compliance with the doctrine. Thus, it is still up to him to determine the appropriate spokesmen. We find no basis for singling out any "substantial group" of Senators as being entitled to time to respond; it may be that members of the House, Governors, and other public or private officials would be just as appropriate spokesmen.

32. Complainants are attempting to engraft an "equal opportunities" requirement in a fairness area where it is wholly inappropriate. We point out that there is no basis for restricting this concept, once adopted, just to the area of Presidential speeches. It could equally be advanced where the Governor speaks, and the State Senate or House has a role to play, or where the Mayor addresses the community on a matter within the ambit of the City Council, and so on.

33. The same considerations are applicable to the BEM specification that the opposing broadcast immediately follow the Presidential speech. If adopted, it would be applicable to all speeches involving controversial issues. But we have declined such a requirement generally because it restricts robust, wide-open debate. See Report on Editorializing, par. 8. We adhere to that long-established policy. What is required is that the public be given a reasonable opportunity to be informed about the other side--not rigid rules which inhibit the opening or presentation of the debate.

34. This is true also with respect to the nature of time to be afforded the contrasting viewpoint. As stated, the question of reasonableness calls for a judgment on the facts of each case. In the case of Presidential addresses, there is no requirement that they be met by countering addresses. Licensees are of course free to do so, and have done so on many occasions in the past, but they may also make the judgment to use a variety of formats--the presentation of representative partisan viewpoints on newscasts, on news interview programs, and the licensee's own analysis, either after the speech or in subsequent newscast or editorials. The critical issue is whether the sum total of the licensee's efforts, taking into account his plans when the issue is a continuing one, can be said to constitute a reasonable opportunity to inform the public.

on the contrasting viewpoint--one that is fair in the circumstances.

35. Just as examples, we shall discuss two precedents. In Letter to Republican National Committee, 40 FCC 625, 626 (1964), the Commission had before it a complaint which is directly in point to the situation under discussion--a TV and radio broadcast by President Johnson and a complaint that only the equal time appearance of the spokesman for the opposing party, Senator Goldwater, ". . . can meet the test of fairness in the circumstances of this case, and news clips and other off-hand coverage will not suffice." The Commission, after holding that the fairness doctrine was applicable to the situation, pointed up the different nature of that doctrine from the equal opportunities provision (using the same quotation from the Fairness Primer--see para.22, supra). The Commission stressed that in making the determination whether the networks have acted reasonably, "the licensee's overall performance is considered (i.e., 'all the programs irrespective of the programming format, which he has devoted to the particular controversial issue during the appropriate time period'). See, Ruling No. 15, Fairness Primer, Letter to Cullman Broadcasting Co., FCC 63-849)." The Commission then noted that all the networks had afforded Senator Goldwater extensive opportunities to state his position on the issues covered by President Johnson in a large number of newscasts; that two of the networks had presented Senator Goldwater or his representative in speeches (ABC in a half-hour paid broadcast, NBC in a 15-minute broadcast offered to the Republican National Committee); that NBC had invited Senator Goldwater to appear on "Meet the Press," "where it could give him a further opportunity to present his viewpoint in response to questions . . ."; and that CBS was planning a news documentary in which Senator Goldwater was invited, and that "if he accepts the invitation, he will have an opportunity to make a further statement of his views on the events in question." The Commission found, based on these showings, that the networks had not acted unreasonably.

36. The second example case, illustrating the same principles but on the gubernatorial rather than presidential level, is our recent ruling in Boalt Hall Students Association, 20 FCC 2d 612 (1969). We believe that these precedents, and others such as Letter to Blair Clark, 11 FCC 2d 511, 515 (1968), are sound and should be adhered to. We therefore decline to overrule them and to hold, as these complainants in effect seek, that an "equal opportunities" concept is applicable to broadcast addressed by the President, a Governor, a Mayor, and so on.



C. The Complaints that the Networks or Licensees Have Not Achieved Fairness in View of the Number of Presidential Broadcasts on the Indo-China War and Their Efforts to Present the Contrasting Viewpoint.

37. The foregoing dealt with the applicability and requirements of the fairness doctrine as to a single Presidential broadcast on any controversial issue. In this section, we deal with those complaints (or aspects of complaints) that as to the Indo-China War issue, the networks or licensees have presented since November 1969 five Presidential addresses on the Indo-China War in prime time, 22/ and that while spokesmen for the contrasting viewpoint have been presented in newscasts, interview programs, and documentaries, no one has been afforded the kind of opportunity which the President had; that the President was the only person appearing during these prime time speeches, he answered no questions, there were no interruptions of the President's presentation commercial or otherwise, and the speech was unedited (Complaint of Committee for the Fair Broadcasting of Controversial Issues; the 14 Senators' complaint; the BEM complaint).

38. First, we do not depart from the basic principles governing the application of the fairness doctrine. We therefore stress, as we have in the past cases, that we look to all the programming that has been presented on the issue. In making the judgment whether the networks have acted reasonably, we must take into account the nature of the programming presented on one side of the issue; and in this instance, that means of course the number of Presidential addresses in prime time.

39. There is no question but that the networks have presented extensive programming dealing with the issue of the Indo-China War. CBS submitted a detailed showing in this respect, which we take to be typical for the networks. The showing encompasses presentations in newscasts, news interview shows, documentaries, or on-the-spot coverage of bona fide news events, which involved either analysis by network commentators or very frequent appearances of partisan spokesmen for the contrasting viewpoints on this issue, including in prime time periods. Relevant here also are the analyses by the commentators after the Presidential addresses. In addition to the network newscasts, licensees present their own newscasts, which again deal extensively with the Indo-China War issue. Further, many licensees editorialize. As an example, we point to the showing made by WCBS-TV, where it has editorialized extensively against the Indo-China War and afforded appropriate spokesmen the opportunity to reply (CBS News Exhibit).

22/ These five broadcasts and the amount of time the President spoke are: 11/3/69 -- 9:30 - 10:02 p.m.; 12/15/69 -- 6:00 - 6:14 p.m.; 4/20/70 -- 9:00 - 9:30 p.m.; 4/30/70 -- 9:00 - 9:41 p.m.; and 6/3/70 -- 9:01 - 9:16 p.m. The Vietnam War was discussed in the President's State of the Union Message (1/22/70 -- 12:30 - 1:30 p.m.), and comparable time was afforded by the three networks to spokesmen of the Democratic Party to respond to this speech on the State of the Union.

40. The question is whether in the circumstances the networks have afforded reasonable opportunity for the presentation of the contrasting viewpoints on this issue. All of the foregoing presentations were roughly balanced--that is, the newscasts, documentaries, interview shows, etc., all presented a balanced number of spokesmen on each side of the issue. The CBS showing indicates that the balance would slightly favor the Administration side of the issue, without consideration of the five Presidential addresses. The critical consideration thus becomes: Are reasonable opportunities afforded when there has been an extensive but roughly balanced presentation on each side and five opportunities in prime time for the leading spokesman of one side to address the nation on this issue? We believe that in such circumstances there must also be a reasonable opportunity for the other side geared specifically to the five addresses (i.e., the selection of some suitable spokesman or spokesmen by the networks to broadcast an address giving the contrasting viewpoint). We wish to stress that we are not holding that such obligation arises from a single speech--that where an uninterrupted address is afforded one side, the fairness doctrine demands that the other side be presented in the same format. That is the modified "equal opportunities" doctrine discussed in Part B, supra, and rejected by us. Rather, our holding here is based upon the unusual facts of this case--five addresses by the outstanding spokesman by one side of an issue. 23/

41. It is thus critical to examine what the networks have done in this respect, i.e., affording time for an address to answer those of the President on this issue, such as was done when Senator Mansfield was invited to respond to the President's speech on the economy. ABC cites only one program, a May 9th speech of Mr. O'Brien, the DNC Chairman, in which, it states, he was "generally critical" of the Administration policy on Indochina. No further details are given, such as the length of time Mr. O'Brien devoted in the 30-minute speech to this issue. CBS has stated its plan to present a series of such programs, with spokesmen selected by the DNC, in order to provide a prime time opportunity to

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23/ In referring above to the leading spokesman (i.e., the President), we wish to emphasize that we are not in any sense addressing ourselves to the matter of equalizing impact--of the effectiveness of various spokesmen or their presentation. As many of the complainants recognize, the President stands alone in this respect, and obviously, by the very fact of his office, commands very great audiences, particularly when he speaks on a grave national problem such as Cambodia. We thus repeat that our concern is rather the question of reasonable opportunity in the circumstances for the public to be informed concerning the contrasting viewpoint.

counterbalance the Presidential addresses on public issues. But in the one program which it did present, an uninterrupted presentation by the Chairman of the DNC on July 7, 1970, there was only a few minutes (about two) reference to the Indochina War issue. As to NBC, it has not invited any spokesmen for a speech on this issue, but it does cite the broadcast on May 12, 7:30 - 8:00 p.m., of a special program paid for by the Amendment to End the War Committee, in which partisan spokesmen gave their views on an uninterrupted basis. The fact that this program was on a paid basis does not take it out of consideration in this fairness evaluation. See Letter to Republican National Committee, supra; Cullman Broadcasting Co., supra. The NBC showing clearly comes closest to satisfying the requirements of the fairness doctrine in this respect. However, in light of the fact of five Presidential speeches on this issue, we believe that more is required of each of the networks in this respect (i.e., affording prime time for a speech by an appropriate spokesman for the contrasting viewpoint to that of the Administration on the Indochina War issue). We do not hold that there is any requirement for "equal treatment to the five speeches; that is again a modified "equal opportunities" requirement which we reject for the reasons previously stated. While, as shown, all the networks have done something in the area of uninterrupted presentations in covering this issue, the result in each case falls short of what is reasonable in the circumstances. Thus, we require that at the least, time be afforded for one more uninterrupted opportunity by an appropriate spokesman to discuss this issue, with the length of time to be determined by the nature of the prior efforts in this area of uninterrupted presentations (and with thus the least requirement in this respect on NBC). We of course leave entirely to the judgment of the networks the selection of the appropriate spokesmen. See discussion, supra. p. 13.

42. We believe it important to make clear two things. First, our holding does not reflect adversely on the networks. On the contrary, we recognize that the networks have been making good faith efforts to inform the public on this vital issue. Further, we appreciate that there is some support for their position in the "theory" of the fairness doctrine, stressed by the networks in their arguments to us. But, as the Supreme Court stated in a different context, "Legal theory is one thing. But the practicalities are different." (Ashbacker v. U. S. 326 U.S. 327, 332 (1943).) Here "practicalities"-- or, stated differently what is "reasonable" in the circumstances of five prime time addresses by one side--clearly call for the greater effort by the networks which we have noted above.

43. Second, in so holding, we do not mean to discourage in any way the networks' presentation of Presidential reports to the nation. It requires no discussion by us to point up the important contribution which such addresses make to an informed public. We note that the network

are unanimous in this recognition. See, e.g., speech of President Frank Stanton, p. 3. Our holding is thus directed solely to the matter of a reasonable opportunity for the expression of the contrasting viewpoint. It is limited to the unusual facts of this case--near balance on an issue, with one side in addition afforded five prime time opportunities to deliver speeches on that issue.

44. Finally, we note that we are dealing here with continuing plans to deal with a continuing issue, in terms of the presentations by both sides. Obviously, the licensee's future efforts must therefore be tailored reasonably to take into account future developments. We thus stress that on an issue of this over-riding importance, there must be continuing and strict adherence to the requirements of the fairness doctrine that the public be reasonably and realistically informed in light of the circumstances.

45. In view of the foregoing, we grant the complaints here involved, to the extent noted above.<sup>24/</sup>

D. The Complaint of Senator Dole and Ten Other Senators Against NBC. Involving the May 12, 1970 Program on NBC Which Supported the "Amendment to End the War."

46. This complaint was described in pars. 18-19. In view of our prior discussion, we believe it clear that NBC cannot be said to have acted unreasonably in rejecting the request for comparable time without cost to present opposing viewpoints to the May 12, 1970 program, paid for and presented by the Committee for the Amendment to End the War.

47. First, there is again no question but that the program dealt with a controversial issue of public importance and that the fairness doctrine is applicable. The critical question is whether NBC has failed to present contrasting viewpoints on the issue concerned.

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<sup>24/</sup> The complaint of the Fourteen Senators is also directed at network refusal to sell time for the presentation of views on the Indochina War by the Senators. ; In a Memorandum Opinion and Order dealing with the petition of the Democratic National Committee, supra, the Commission has considered this question and re-affirmed its holding that a licensee may reasonably decline to sell time for the presentation of views on controversial issues of public importance.

48. The complainants urge that the issue is not the Indochina War but rather one of the "Amendment to End the War." However, no showing has been made that NBC's judgment is arbitrary in viewing the "Amendment" as part of the Indochina War issue. The program dealt extensively with that issue, and made clear that the "Amendment" constituted the sponsors' position on the War. See text of the May 12 broadcast, Cong. Rec. May 13, 1970, pp. S-7079-82. A contrasting position is that of the Administration--that the course being followed by the Administration is the one which best serves the nation. As shown by the above discussion, the President has had substantial time to state that position. Further, it has been extensively presented by other spokesmen on newscasts, news interviews and documentaries. See NBC example showing, p. 4, attachment, NBC Reply.

49. With respect to the "Amendment" itself, NBC states that as a part of its continuing coverage of the Indochina issue, it will give coverage to the "Amendment" by the time it is formally presented for adoption on the floor of the Senate. Indeed, as an example, it cites three instances where spokesmen (Senators Cook, Dominick and Packwood) have already been given the opportunity to express their opposition to the "Amendment."

50. Finally, while complainants make much of the appeal for funds by the Committee for the Amendment to End the War, no showing has been made that this appeal in these circumstances constituted a separate issue apart from the "Amendment" on the position against the Indochina War.

51. In view of the applicable principles (Part A), we conclude that NBC has not been shown to have acted unreasonably. See Letter to Republican National Committee, 40 FCC 625, 628 (1964).



E. The Complaint of the Republican National Committee (RNC)

52. This complaint has also been described in full (pars. 14-17). As stated, CBS decided to present the Democratic National Committee (DNC) as an appropriate spokesman in a series of prime time, uninterrupted broadcasts to present contrasting views to those expressed by the President in his extensive use of prime time for broadcasts to the nation. RNC asserts that the DNC broadcast of July 7, 1970, was partisan in nature and really dealt with the issue, "which party should be in power"; and that the broadcast covered issues upon which the President had not expressed any viewpoint.

53. Again, we believe that no extended discussion is needed in view of prior precedents such as the Letter to Nicholas Zapple, 23 FCC 2d 707(1970). We hold, based on such precedents, that the fairness doctrine requires that some reasonable period of time be afforded by CBS to the RNC or some other appropriate Republican Party spokesman selected by CBS.

54. In so holding, we wish first to stress that we do not accept arguments advanced by RNC directed to CBS' good faith. It is perfectly clear that CBS has acted in good faith. It has become concerned with the increasing number of prime time speeches by the President, not in whether to present such speeches, but rather in how best to inform the public concerning the contrasting viewpoint (p. 3, Stanton speech, CBS Showing). It therefore decided upon the "Loyal Opposition" concept, and stated that "the CBS policy of making time available for the principal opposing party to answer the President will apply equally to the Republican Party when there is a Democratic President" (p. 7, CBS Opposition). Since CBS was thus responding in good faith to the need for a greater effort in this area, found by us to be appropriate here (see Part C, supra), it is to be commended for its concern.

55. However, in practice, the CBS effort, as represented by the DNC broadcast of July 7, 1970, did not fulfill CBS' intention. That intention was to offer the principal opposition party an opportunity to reply from time to time to a President on major public issues treated in Presidential appearances. But as stated the Presidential addresses have concentrated very largely on the Indochina War issue (see n. 22, supra; the one other address during this period was concerned with the economy).

The DNC broadcast only referred briefly to the Indochina War issue (i.e., about two minutes just before the conclusion of the broadcast), and thus did not, we believe, really fulfill the CBS purpose. 25/

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25/ Indeed, see in this connection the testimony of the president of CBS before the Senate Committee on Communications, p. 140, Transcript of Hearings on August 5, 1970, where in answer to a question whether he thought it was fair to have presented the DNC broadcast and not to give time for an answer, he stated: "I think that if this were to persist, if this is the way the Loyal Opposition broadcast series develops, we would have to reconsider." Thus, in actual implementation as to this first DNC broadcast, the broadcast would appear to have been "person or party" oriented rather than issue-oriented, as CBS stated its intention to be. CBS would not appear to have exercised journalistic supervision to assure fulfillment of its purpose.

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53. Again, we believe that no extended discussion is needed in view of prior precedents such as the Letter to Nicholas Zapple, 23 FCC 2d 707(1970). We hold, based on such precedents, that the fairness doctrine requires that some reasonable period of time be afforded by CBS to the RNC or some other appropriate Republican Party spokesman selected by CBS.

54. In so holding, we wish first to stress that we do not accept arguments advanced by RNC directed to CBS' good faith. It is perfectly clear that CBS has acted in good faith. It has become concerned with the increasing number of prime time speeches by the President, not in whether to present such speeches, but rather in how best to inform the public concerning the contrasting viewpoint (p. 3, Stanton speech, CBS Showing). It therefore decided upon the "Loyal Opposition" concept, and stated that "the CBS policy of making time available for the principal opposing party to answer the President will apply equally to the Republican Party when there is a Democratic President" (p. 7, CBS Opposition). Since CBS was thus responding in good faith to the need for a greater effort in this area, found by us to be appropriate here (see Part C, supra), it is to be commended for its concern.

55. However, in practice, the CBS effort, as represented by the DNC broadcast of July 7, 1970, did not fulfill CBS' intention. That intention was to offer the principal opposition party an opportunity to reply from time to time to a President on major public issues treated in Presidential appearances. But as stated the Presidential addresses have concentrated very largely on the Indochina War issue (see n. 22, supra; the one other address during this period was concerned with the economy).

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Further, the broadcast would appear to have come within the type which was the subject of our recent ruling, Letter to Mr. Nicholas Zapple, 25 FCC 28 707 (1970).

56. We were there concerned with the application of the fairness doctrine to situations involving spokesmen for political parties. For example, if during an election period, a network sold time to the RNC Chairman who made an attack on the Democratic Party, the fairness doctrine would be applicable, and time would have to be sold, upon request, to the DNC for a response. 26/ If the attack had been made on free time, then free time should be afforded for the response. In this really quasi-"equal opportunities" type of situation, it would not suffice for the network to say that it would present the DNC side by news clips or interview shows. Viewing the present case, we believe that despite CBS' clearly good intentions, what occurred did fall within this political spokesmen arena, and thus differed from the case where CBS selected the spokesmen to speak expressly on a subject. Indeed, as stated, CBS in effect, appears to have recognized as much (see n. 25).

57. We therefore hold that fairness requires CBS to extend some time to RNC or a partisan Republican spokesman, to answer matters raised in the broadcast. The exact amount of time and other matters are left to the good faith, reasonable judgment of CBS, since, in view of all the facts here (e.g., that the DNC broadcast is not one on a clean slate and thus did deal to some extent with the Cambodian issue, to which the President has made the five noted addresses), this is not a precise "equal opportunities" situation.

58. Finally, our holding is limited to the facts of this case, and specifically to this one DNC broadcast. Thus, we do not accept the RNC argument that the national committees "... are inappropriate spokesmen to respond to policy issues raised by Presidential appearances" (RNC Reply, p. 6). The short answer is that this is an area where the licensee has very great discretion. 27/ Perhaps it would be sounder or better policy for CBS always to select spokesmen in each instance. 28/

26/ We further held that the Cullman principle would be inapplicable.

27/ As a further matter, we note that RNC has no argument to CBS' point that in 1963 the RNC requested time from CBS as the appropriate spokesman to answer an address by President Kennedy, and that this request was granted.

28/ We note that CBS has by no means settled upon DNC or delegated to DNC, the exclusive role of achieving fairness by setting forth views opposing those of the Administration. Cf. Golden West Broadcasters, 8 FCC 2d 987 (1967). On the contrary, CBS has stressed

But that is not a matter for this agency. Our holding is thus that whatever the appropriateness of the DNC and its Chairman as a spokesman, the practical result here was one coming within the principles of our recent ruling, Letter to Nicholas Zapple -- that CBS' arguments, however superficially sound in theory, are defective when viewed against 'the practicalities.' See discussion, supra, paragraph 41.

59. Accordingly, the RNC complaint is granted, to the extent noted above.

FEDERAL COMMUNICATIONS COMMISSION \*

Ben F. Waple  
Secretary

\*See attached statements of Commissioners Burch, Chairman; Robert E. Lee and H. Rex Lee; Commissioner Johnson issuing a statement at a later date.

28 cont'd/ that "for the most part, for reasons developed at length in [its] reply to the DNC Request for Declaratory Ruling (pp. 3-10), CBS relies on the efforts of news professionals to produce broadcasts which provide a balanced treatment of important public issues including extensive presentations by partisans of their viewpoints. (p. 8, CBS opposition). Thus, CBS' policy is to rely upon its information broadcasts (e.g., newscasts, news interviews, news documentaries, on-the-spot coverage of bona fide news coverage) "as the most effective method of informing the public."

EXHIBIT

I. Pleadings relating to Complaint of Committee for the Fair Broadcasting of Controversial Issues:

- A. Complaint of Order to Show Cause to Cease and Desist and Request for Expedited Disposition filed May 25, 1970, for the Fair Broadcasting of Controversial Issues of ABC-TV (New York) and WTIC-TV, (Hartford, Connecticut)
- B. Response of CBS, filed June 23, 1970
- C. Response of WTIC-TV, filed June 22, 1970
- D. Reply to Oppositions filed by the Committee on June 30, 1970.

II. Pleadings relating to Complaint of Fourteen United States Senators and the Movement to End the War Committee against CBS, ABC and NBC and their owned and operated stations:

- A. Complaint of Order to Show Cause to Cease and Desist and Request for Expedited Disposition filed July 8, 1970
- B. Response of CBS filed July 20, 1970
- C. Response of ABC filed July 21, 1970
- D. Response of NBC filed July 28, 1970
- E. Reply of 14 U.S. Senators and Amendment to End the War Committee filed on July 30, 1970.

III. Pleadings relating to Application for Review filed by Business Executive Move for Vietnam Peace:

- A. Application for Review filed June 15, 1970 by Business Executives Move for Vietnam Peace

IV. Pleadings relating to Complaint of Republican National Committee:

- A. Petition of Republican National Committee for relief against CBS filed July 13, 1970 and supplement filed July 14, 1970
- B. Response of CBS filed July 21, 1970
- C. Reply of RNC filed July 30, 1970.

V. Pleadings relating to Complaint of Eleven United States Senators (Senator Bob Dole, et al.):

- A. Letter to Federal Communications Commission filed by Senator Bob Dole, et al. on July 13, 1970
- B. Brief of Eleven United States Senators in support of Request for Time to Present Contrasting Point of View filed on July 16, 1970, and
- C. Reply of NBC filed on July 30, 1970.

## SEPARATE STATEMENT OF CHAIRMAN DEAN BURCH

On August 14, 1970, the date that the decision in this case was announced by a press release I had no intention of issuing a separate statement. However, having had the opportunity for three days to read the press treatment of this decision, I now feel compelled to attempt to clear up what must be a very mysterious proceeding for those people who have only had the opportunity to read about the decision in the various print media.

First of all, I recognize that the fairness doctrine is a term of art and that any decision in this area is somewhat difficult to explain in lay terms and within the space limitations of newspapers and news magazines. Further, the Commission's procedure in issuing a news release in advance of the text of our decisions helps to compound the problem. The reason for this procedure is an attempt on our part to alleviate the insidious practice of news reports based on internal leaks from within the Commission. Once a decision is reached in this agency it finds its way into the press immediately - hence the press release system is an effort on our part to insure that news reports will be accurate and available to all news media at the same time. Nevertheless, even considering our procedures, the difficulty of the subject, the brevity of the press release announcing the decision and the space limitations of the media, it seems to me that the treatment accorded this decision over the week-end is a classic example of Murphy's law at work.

In many instances the actual news stories are reasonably accurate but the headline writers (as seems to happen all too often) have completely distorted the substance of the ruling.

A good example of the headline writer at work is to be found in the Christian Science Monitor of Monday, August 17, 1970. The story on this decision is headlined "Anti-Nixon TV Time Ordered." I would think that any fair observer would agree that nowhere in this decision is there any statement or implication that "anti-Nixon" time has been ordered. (Perhaps the prize for the most cryptically misleading headline should go to Chicago Today for its August 15 headline which reads, simply: "Anti-Nixon Prime Time.")

The Washington Star in its August 15 edition headlined "Equal Time Ordered on War Issue." It should be noted that on August 17 the Washington Star did run a story by Robert Walters on this decision which carefully interpreted the decision and did not use a misleading headline.

The Chicago Sun Times of August 15 fell into the same trap with its headline "FCC Rules Equal TV Time Is Due War Critics - GOP." The Boston Globe of August 15, 1970, captioned its story on this decision "FCC Says TV Must Give Equal Time to War Critics." The St. Paul Pioneer Press of August 15, 1970, headlined its story "War Foes Win Equal TV Time."

Perhaps some of this confusion can be explained by an AP wire story on this decision which stated in part: "The FCC has ruled broadcast networks must give opponents of President Nixon's Indo-China War policy equal, prime-time rebuttal." (emphasis supplied) Here, despite the Commission's careful attempt in the press release to distinguish between "equal opportunity" under Section 315 of the Communications Act and "reasonable opportunity" under the Fairness Doctrine a reporter indicated that the FCC had awarded "equal" time, which simply isn't the case.

Turning now to the bodies of the various stories which appeared throughout the country, the National Observer on Monday, August 17, 1970, in the first paragraph of its story on this decision stated: "The major television networks were ordered to provide five segments of prime time to the Administration's leading war policy critics to rebut five Vietnam war broadcasts made by President Nixon since last November." (emphasis supplied) It is difficult to understand how this sentence could have been extracted from our press release on the same subject which, among other things, included the following: "The Commission said that it would 'require that at the least, time be afforded for one more uninterrupted opportunity by an appropriate spokesman to discuss this issue . . .'" (emphasis supplied)

This decision did not, as Newsweek opined, establish "a new fairness doctrine" and despite the Commission's statement that "this ruling is not meant to discourage in any way the networks' presentation of



Presidential reports to the nation . . . , "Time was quick to speculate on "radically changed Presidential broadcast habits." Neither is this decision a proper foundation for the two opening paragraphs in the coverage of this decision by the New York Times (August 15) which said:

"The Federal Communications Commission said today that President Nixon had made such extensive use of television to defend his conduct of the war in Indochina that the networks must now give opponents a chance to present critical replies on prime time.

"The requirement that broadcasters not simply cover the other side but give uninterrupted, premium exposure to the President's opponents was the first of its kind and appeared likely to alter Mr. Nixon's use of the medium."

First of all, the FCC did not say what the Times states it said.

Secondly, the Commission was at pains to point out, in its press release, that it was not engrafting an equal opportunities requirement in a fairness area and as pointed out above, the Commission carefully avoided any suggestion that the Presidential reports to the nation be discouraged.

Although I could cite numerous other examples of what has been, at best, peculiar coverage of this particular decision, I think the foregoing will suffice to make the point.

I trust that my concern over the press handling of this decision will not be interpreted as an anti-First Amendment sentiment and I further trust that such errors as I have pointed out will be corrected and, hopefully, in the future will be avoided.

Having dealt at some length with what the Commission did not do in this case, it might be helpful to state what it did.

1. We have not changed, altered or in any way expanded the basic principle of the fairness doctrine. It still relates to issues, not to people and requires a licensee to make reasonable judgments in good faith as to the presentation of viewpoints on controversial issues of public importance.

2. We have expressly rejected any principle embodying right of reply or rebuttal to the President. In fact, in paragraph 30 of the Order we specifically denied requests that a right of reply exists in anyone to respond to the President or any spokesman, whomever he may be, when speaking on a controversial issue of public importance. We have rejected in paragraph 32 any attempt to 'engraft an 'equal opportunity' requirement in a fairness area." In paragraph 34 we find that there is no obligation to provide time for countering addresses to those of the President. Rather, it is up to the licensee to ensure that whenever any spokesman for a controversial issue is presented reasonable opportunity is made available for opposing viewpoints -- the format being left to the discretion of the licensee. This point is made abundantly clear in the language dealing not only with the Presidential addresses but with the CBS "loyal opposition" program.

3. As to the Indo-China War issue, we found that the networks made "an extensive but roughly-balanced presentation on each side. . . without

consideration of the five opportunities in prime time for the leading spokesman (the President\*) of one side to address the nation on this issue" and in such circumstances time should be afforded for at least one more uninterrupted opportunity by an appropriate spokesman for the other viewpoint. We reiterate our rejection in paragraph 41 of any concept of "equal treatment" of the five speeches. Rather, those speeches were averaged in by the Commission along with all the other opportunities for presentation of viewpoints in finding whether fairness had been achieved.

4. Our ruling was not intended to "discourage in any way the networks' presentation of Presidential reports to the nation" (para. 43). We recognize their importance to an informed public opinion as do the networks.

5. Further, we ruled that no matter how well intentioned CBS was in developing the "loyal opposition" concept, the Democratic National Committee broadcast of July 7, 1970, was 'person or party' oriented rather than issue-oriented as CBS intended and as such the broadcast covered issues in the political spokesman arena and fairness requires CBS to give some

\* In using the term spokesman we use it in an issue sense for purposes of the fairness doctrine.

time to a Republican spokesman to respond. (The Commission did not treat the difficult question of whether the fairness doctrine can be institutionalized.) In so holding the Commission concluded that contrary to its assertions, "CBS would not appear to have exercised journalistic supervision to assure fulfillment of its purpose."

STATEMENT OF COMMISSIONER ROBERT E. LEE

I voted for the results reached by the Commission in this document. Where a licensee fails to confine a "fairness doctrine" response, such as the one made by the Democratic National Committee, to the issues originally raised, he opens the door to a further response on the additional issue or issues. I would further point out that a licensee is obligated, under the fairness doctrine, to select appropriate spokesmen on a case-by-case basis in terms of the particular issue (Golden West Broadcasters, 8 FCC 2d 937) and that the advance selection of the Democratic National Committee as the appropriate spokesman in the future for one side of national issues, as apparently proposed by CBS, could serve to establish its Republican counterpart as the most appropriate spokesman for the other side.

## FAIRNESS DOCTRINE

(In re Five Complaints Alleging Violation of the Fairness Doctrine  
by the Three Networks)

### DISSENTING STATEMENT OF COMMISSIONER H. REX LEE

Under the fairness doctrine, the Commission's general standard has always been directed toward testing the reasonableness and good faith of a broadcaster's action. Innocent error or mistakes of judgment, occurring in the broadcaster's overall balance of programming, do not constitute sufficient reason to justify finding that a licensee has failed to perform its obligations in the public interest. In the arena of political debate, both the heat of issues involved and the volume of demands for air time (such as we find in these cases) underscore the necessity for protecting the exercise of reasonable discretion in the broadcasting industry.

In my view there has been no substantial showing that the networks, and involved broadcast licensees, acted unreasonably or failed to fulfill their obligations under the fairness doctrine. Therefore, I believe all the attached complaints should have been denied. Accordingly, I dissent.

## Presidential Access

[In re complaints of Committee for the Fair Broadcasting of Controversial Issues, et al., alleging violations of the fairness doctrine regarding views opposing and supporting Presidential addresses on the Vietnam War.]

### Concurring Opinion of Commissioner Nicholas Johnson

The Washington Post, August 21, 1970, at A-22, col. 4:

#### Air Supremacy



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The Washington Post, August 26, 1970, at A-14.

"Fair Is Fair — We Have A Little Box For You Too"



Copyright 1970 by Herblock in The Washington Post



On August 14, 1970 the Commission disposed of five pending petitions involving the Fairness Doctrine and President Nixon's televised statements on the War in Southeast Asia. It granted some and denied others. I concurred generally in the Commission's decision. My vote was necessary to get majority action to achieve the very limited relief the Commission has provided. My support was less than enthusiastic.

This opinion is intended to explain my vote and to offer my views on the political fairness matters the Commission has decided. At the same time I wish to comment on several matters that have occurred since the announcement of our decision.

I:

With minor variations, all five complaints allege that the three major television networks, or their station affiliates, have failed adequately to discharge their fairness doctrine obligations to present all major contrasting views on the Vietnam War.

The first three complainants, Committee for Fair Broadcasting of Controversial Issues [Committee], Amendment to End the War Committee and Fourteen United States Senators [Fourteen Senators], and Business Executives Move for Vietnam Peace (Los Angeles Chapter) [Business Executives], all argue in essence that the President's five major television addresses on Vietnam during a period of seven months triggered the fairness doctrine, but that the networks and affiliates failed

to present views contrary to the President's sufficiently often and in comparable format.<sup>1/</sup>

The Republican National Committee [RNC] has alleged that CBS triggered the fairness doctrine when it broadcast a half-hour statement on July 7, 1970, by Lawrence F. O'Brien, on behalf of the Democratic National Committee [DNC]. RNC argues that it is entitled to reply time because although CBS gave Mr. O'Brien time to respond to the President's Vietnam addresses, he in fact spent only a few minutes on that topic and devoted his remaining time to controversial issues not touched by the President.

Finally, Eleven United States Senators have asked for "equal time without cost" to reply to a 30-minute program presented on NBC by a number of Senators who were members of the Amendment to End the War Committee.

## II.

During the seven month period from November 1969 to early June 1970, the President delivered five major speeches on the war in South Vietnam.

Asia--on November 3, 1969; December 15, 1969; April 20, 1970; April 30, 1970; and June 3, 1970. These speeches were given substantial prior publicity in newspapers and over television. With one exception, all were delivered during the "prime" of prime-time hours--between 9:00 p.m. and 10:00 p.m. The shortest was 14 minutes; the longest was 41 minutes. Each speech was carried simultaneously by the three national networks. Each speech was carried live. Each speech was broadcast completely intact, without interruptions, cuts, commercial insertions, or delays. There were no questions asked of the President, either before, during, or after his addresses. In every case, the President himself initiated the speeches, chose the day and hour for those speeches (apparently with an eye toward the largest prime-time audiences), and evidenced his willingness to accept live television coverage. The speeches were delivered in settings conducive to live television coverage designed to present the most favorable possible image of the President and his views. And the speeches were delivered in "series"--arranged in a pattern of periodic installments or statements, each bringing the country "up to date" on the status of the administration's policies. Often the President made references to earlier speeches, reminding the audience of his prior positions and comparing them with the war's progress.

It is important to emphasize the President's powers in controlling his use of television in these cases. Not only does he control format and

content, he is allowed to eliminate competition by simultaneous carrying on the three networks as well as many other stations. In addition he is able to control when his "pseudo-event" will occur--just prior to an invasion, timed with the taking of public opinion polls, or coinciding with the release of "good" or "bad" news. The power of a President to "go to the people" via television is a power granted to a chief executive which is perhaps unmatched in any other democratic country which accepts the concept of limited and diffused governmental power.

### III.

The first three complainants, Committee, Fourteen Senators, and Business Executives, argue that the networks and their affiliates have failed to devote significant time and attention to views opposing the President's. I agree for the following three reasons.

The President is our most prominent national leader. In terms of power and prestige he occupies a unique position in the government of this country. The fact that the Executive is personified in the person of the President, whereas the "Legislative Branch" is diffused in 535 Senators and Congressmen, gives the President a special advantage in a television age. That he also combines the roles of King, Prime Minister, and Celebrity in Chief gives his TV appearances an added influence.

The unusually strong impact of Presidential messages is increased when, as here, those messages are delivered in a series, in prime-time.

simultaneously on all three networks, without interruptions by commercials or questions, and with the dramatic urgency that a "live" presentation--coupled with vigorous advance publicity--can create.

It is to be noted that these advantages can backfire. The President's November 3, 1969 speech on Vietnam was heralded to the news media as possessing great originality, news value and importance by White House spokesmen. When the news media generally found little in it that was new, and allowed some rebuttal and criticism of the President's views to appear, Vice-President Agnew's Des Moines speech followed, and the reign of repression and response we have witnessed during the past few months which I have detailed in speeches and elsewhere. See my "Vice President Agnew Statement" (November 17, 1969); "Subpoenas, Outtakes, and Freedom of the Press" (February 12, 1970); "The Talkin' Blues" (March 2, 1970); "Public Channels and Private Censors" (The Nation, March 1970); Chicago Journalism Review (May 1970, pp. 7-10); "The Power of the People and the Obligation to Dissent" (May 8, 1970).

#### IV.

I concur fully in the majority's resolution of the petition presented by Senator Dole and ten other Senators. Paid political speech should not be deemed to generate fairness response requirements where broadcasters are already meeting overall fairness requirements--as the majority finds the networks have done in this instance. I would hold that the 11 Senators

should be able to purchase time from NBC if they so desire. (See Business Executives, FCC 70-860; Democratic National Committee, FCC 70-861). I would also distinguish this situation from those circumstances where repeated commercials paid for by sponsors would be deemed to raise fairness obligations leading to free time. (See Friends of the Earth, FCC 70-862).

V.

My concurrence in the majority action on the petition of the Republican National Committee is extremely reluctant. As the majority points out in paragraph 54, something like the CBS program "Loyal Opposition" was clearly necessary to redress the balance between the major parties, as well as the imbalance between access by the President and the Congress. For the networks to make no response to the issues that have been raised in these matters before the Commission would, in my view, call for even more drastic Commission action. For CBS and the other networks now to cut back their efforts to achieve fairness in the area of political speech would be disastrous.

Mr. O'Brien's DNC broadcast was intended as a balance to the of the President to use television in addresses and news conferences. CBS recognized in titling the program the "Loyal Opposition." It was an effort to give access to spokesmen who could play a role similar to that of a "shadow government" in a parliamentary system.

The Republican National Committee, by contrast, does not hold the same position in comparison with the Democratic National Committee as the DNC does to a Republican President. President Nixon speaks as Party Leader as well as President, and there is no suggestion that the views of the RNC are in any sense at variance with those of the President. It may very well be that the RNC ought to be given time in its own right from time to time. But it does not follow that the RNC must be given time to reply to the DNC everytime the DNC is given time to reply to the Republican President.

In this instance, however, I am prepared to concur in the majority's decision, given the content of the DNC program. Certainly there is nothing in the majority's opinion to suggest that the RNC is entitled to anything more than a five minute reply under these circumstances. I will want to give this matter further consideration in light of future developments.

## VI.

I concur in the majority's holding that the public interest requires that time be made available "by an appropriate spokesman for the contrasting viewpoint to that of the Administration on the Indochina War," as argued by the BEM petition, the Committee for Fairness petition, and the petition of the 14 Senators.

I do not agree, however, with the majority's reliance on the supposed "uniqueness" of the series of five addresses by President Nixon. Whenever a President speaks one could almost say that, by definition, he has spoken on what the Fairness Doctrine characterizes as a "controversial issue of



public importance"--if it wasn't such an issue before he expresses his views, it is after he speaks. Furthermore, by definition, he almost always expresses only a single point of view, or side of the argument, regarding that issue. Therefore, I believe that the nature of our political system requires that every broadcast of an uninterrupted Presidential address gives rise to an obligation to present appropriate contrasting viewpoints.

It will often be the case that the "appropriate" spokesman to add the views of the President will come from the Congress. We must not forget that when the President addresses the nation, he inevitably speaks as an advocate and as the head of his Party--whether Democratic or Republican.

It is almost impossible to separate the various roles of the President: elected representative of all the people, chief national spokesman, chief diplomat, commander-in-chief, ceremonial head of the government, legislator, chief executive officer, and party leader. (Neustadt, "Presidential Government" in the International Encyclopedia of the Social Sciences, p. 451 (1968)). This being the case, I think it is imperative that leaders of opposing parties, and opposing viewpoints in Congress, be given the opportunity to rebut his unilateral statements. This rebuttal is necessary to present different views on issues, to represent opposing political parties, and to the very perpetuation of a system of co-equal branches of national government in a television age.

The problem of finding and presenting spokesmen who can realistically approach the President's impact and prestige is difficult if not impossible. We have no "shadow prime minister" or "shadow cabinet" as in some parliamentary systems where there are national figures who the public knows stand an election away from being head of the government. The President has an inherent advantage because of his office which is further enhanced by the absence of the "head of the loyal opposition" as a spokesman. This circumstance suggests that more response to the President is needed, not less, in order to maintain a balance. This imbalance on television may also ultimately result in opposition party candidates for the Presidency being selected a year or two earlier than at present, in order to personify the opposition for the television audience, i. e., the electorate.

## VII.

A second important consideration supporting my conclusion is that the considerations before this Commission touch the vital "separation of powers" upon which our government is based. The first three Articles of the United States Constitution divide the government into three branches: the legislative, the executive, and the judicial. The first enacts the laws; the second administers them; and the third interprets and enforces them. Martin v. Hunter's Lessee, 1 Wheat. 304 (1816). This principle of separation of powers is fundamental to our scheme of constitutional

government. See, e.g., National Mut. Ins. Co. v. Tidewater Transfer 337 U.S. 582 (1949). Sharp, The Classical American Doctrine of "Separation of Powers," 2 U. Chi. L. Rev. 385 (1935).

The effectiveness of each branch of government, and in particular the legislative and executive branches, depends on the extent to which they can communicate with the electorate--both to solicit views and opinions on the proper conduct of governmental business, and to explain and justify actions of government to the people. If one branch of the government increasingly gains effective access to the media of communications, while the other branch is systematically excluded, then the power balance, presumably designed to safeguard our citizenry from the tyrannies and abuses of excessive power, will be upset.

As I remarked in Democratic National Committee (DNC), FCC August 5, 1970, if the President, but not the Congress, were suddenly granted access to the computer, the telephone, the telegraph, the typewriter, the printing press, and the Xerox machine, then the power between the executive and legislative branches would be severely impacted. In today's modern world, the "power" to govern is substantially determined by the information one controls. As Senator J. W. Fulbright of Arkansas recently testified:

Communication is power and exclusive access to it is a dangerous, unchecked power . . . . As matters now stand, the President's power to use television in the service of his policies and opinions has done as much to expand the powers of his office as would a constitutional amendment formally abolishing the co-equality of the three branches of Government.

Statement by Senator J. W. Fulbright, Hearings on S. J. Res. 209  
Before the Subcomm. on Communications of the Senate Comm. on  
Commerce, 91st Cong., 2d Sess., Aug. 4, 1970. If

the President can communicate information to the electorate, to solicit support for his plans and policies, when the legislative branch cannot, then I believe we will face a constitutional crisis of the gravest proportions.

The interpretation the Commission places on its fairness doctrine, therefore, affects the balance and separation of powers built into our scheme of government. Unless appropriate members of Congress are given national television to reply to Presidential speeches, then the legislative branch of government, the Congress, will be severely handicapped in its ability to govern.

#### VIII.

I find a final justification for my position in the context of other Commission decisions on Vietnam War issues. Although we have at least said that the Vietnam War is a controversial issue of public importance, we have kept the doors of "access" to the media for the direct expression of views on that War tightly locked.

We have refused to permit those opposing Army and Marine Corps military recruitment spot announcements to voice their opposition.  
Fairness Doctrine Ruling, 24 F.C.C. 2d 156, 158 (1970).

We have refused to permit citizens groups, such as the Business

Executives Move for Vietnam Peace, to purchase short spot announcements on radio and television stations to oppose the War--those spots designed perhaps, to "petition" Congressmen who live in the Washington, D. C. area for "redress of grievances." Business Executives, FCC 70-8607 Aug. 5, 1970. And we have rejected the requests of various political parties, such as the Democratic National Committee, to purchase half- or full-hour time segments to present discussions of political issues affecting the country. Democratic National Committee, FCC 70-861, Aug. 5, 1970.

Taken with this Commission's tolerance of network censorship of views opposing the war (see, "Public Channels and Private Censors," The Nation, (March 23, 1970), pp. 329-332), it is difficult to avoid the conclusion that this Commission has taken great strides towards silencing direct dissent in the country on the war. If citizens groups and political parties cannot even buy the television time routinely available to soap companies, and if now they are not entitled to replies to major Presidential addresses on the war, then I fear that the pressures from bottled-up dissent in this country will build toward an inevitable "explosion."

It is ironic that the only persons in the country with "direct access" to millions of television homes are the hawkers of commercial goods and services--deodorants and mouth washes--and the President. If the President, by merely snapping his fingers, can acquire

instant simultaneous access to all four television networks, then how can we in good conscience refuse to grant rebuttal time to opposing spokesmen and leaders from the Congress?

IX.

I cannot conclude my opinion without some comment on the extraordinary statement issued by Chairman Burch. I can think of no other instance when a member of a court or administrative agency has issued an official opinion to "correct" headline writers' accounts of his agency's action. I trust this activity is not to become a regular occurrence at the FCC.

Virtually every public official has experienced occasions when he has felt that stories in which he had a vital interest were not portrayed as he would have wished. <sup>2/</sup> But, in my view, given the difficulties in the way the FCC handled this action, I find little reason to complain. Chairman Burch acknowledges as much--his principal beef is apparently with headline writers rather than with those who covered the stories.

Even when there is reason for a public official to complain, I think it is generally <sup>unseemly</sup> ~~unseemingly~~ and inappropriate--as well as futile and self-defeating--to do so. For an official of the FCC to engage in such action is also ominous, given our powers over many of those providing the news coverage of which we might complain. There has been concern enough about Administration intimidation of the news media without involving the FCC directly.

One of the hopes for the new administrative era at the FCC was that the Commission would no longer have to release by Friday afternoon news of actions taken during the week. The reason the FCC released the news of this action, as the Chairman candidly admits, is because if a release is delayed to Monday, the trade press, which publishes on Monday, will have generally obtained the item through a leak and published its content. The agency announcement then appears to be merely catching up with internal leaks--and the agency is more embarrassed than usual.

Coverage of this matter was made doubly difficult by the fact the Commission has fallen into the habit of "decision by press release"--informing the press (and public) of its decisions in important cases with summary press release only, leaving the full text of majority and minority opinions until days later. Moreover, in this instance, even the press was made available so late on Friday afternoon that many of those to whom reporters might have talked for clarification or interpretation were not available, and would not be until Monday. In those circumstances the press did the best it could which, as the Chairman suggests, was pretty good in an extraordinarily sophisticated and difficult area.

But the most revealing, and I think disturbing, aspect of my colleague's statement is his apparent quarrel with any suggestion that the Commission's action was adverse to the media interests of President Nixon. His comments on Mr. Christopher Lydon's story in one of the favorite administration targets, the New York Times, and his remarks about the Time and Newsweek stories, clearly demonstrate his



sensitivity on this question. It strikes me as overreaching a bit to suggest that these stories were "improper"--and it is relevant to point out that each of these three publications is associated with companies which are Commission licensees.<sup>3/</sup>

But more importantly, one possible reason for the Chairman's extraordinary force and haste in "clarifying" that no criticism of the President was intended is suggested by press reports that the White House staff in fact worked with the Chairman's office in preparing his response to the press coverage of the FCC's decision. See, e.g., New York Times, Aug. 19, 1970, p. 1, col. 2; Washington Evening Star, Aug. 20, 1970, p. A1. I sincerely hope that the reports are not true and that there was no consultation with the White House at any level. The White House, and President Nixon himself, are in fact "parties" to this proceeding--in the sense that it is the President's uninhibited right to use the broadcast media which is at issue in this case. For the White House staff to have participated in any way in this proceeding, or in the encouragement or preparation of "interpretative" opinions, would make a mockery of the independence of an agency which is the creature and arm of Congress--even though there is no question of a violation of the letter of our ex parte contact rules in this instance (because there was not an adjudicatory hearing in process at the time). And yet, one cannot help but wonder where else one could so rapidly obtain such a thorough analysis of the nation's newspaper coverage of the President--including accounts in the

St. Paul Pioneer Press, Chicago Today, and Chicago Sun-Times, none of which appeared in the FCC's internal newspaper reporting service or are from papers prominently displayed on the Chairman's coffee table.

X.

I concurred in the Commission's action here because I believe that, on balance, the package adopted by five Commissioners of widely differing views was a distinct improvement over the situation as it had existed. In this opinion I have outlined how I would have approached the issues had I been free to write the majority opinion as I would have liked it. I am sure that we have not heard the end of these matters--and that the Commission will have future responsibilities and opportunities to consider how the public interest would best be served by the performance of the broadcast media in the political life of our nation.

### Footnotes

1/ The Amendment to End the War Committee and Fourteen United States Senators also raise the separate issue of "access for consideration" [i.e., payment], stating that the networks have refused to permit them to purchase time to present views opposing the President's. My disagreement with the majority position on this issue is fully detailed in Democratic National Committee, FCC 70-861, August 5, 1970, and I will not repeat those considerations here. See also Business Executives Move for Vietnam Peace (WTOP-AM), FCC 70-860, August 5, 1970, dealing with the precise problem of "access for consideration" with respect to short one-minute "commercial-type" announcements.

2/ I will cite an example from the general press, not for purposes of complaining but the contrary: as support for the assertion that there have been numerous instances in which I might have been warranted in complaining about stories or headlines, and have refrained from doing so.

Recently Ralph Nader and I were called by Senator Edward M. Kennedy's Administrative Practices and Procedures Subcommittee of the Senate Judiciary Committee to testify on his bill, S. 3434. The bill is designed to redress the imbalance in the representation of citizen and industry groups before governmental agencies through the establishment of a Public Counsel Corporation. Both Mr. Nader and I testified to the conditions giving rise to the need for such legislation, and endorsed the proposal. The New York Times story on our testimony of July 22, 1970 carried the headline, "Nader and FCC Member Criticize Kennedy Consumer Aid Plan."

I did not complain about this mischaracterization of our positions at the time, and do not do so now. Whether inaccurate headlines and stories are the products of the pressure upon the daily general press, or the occasionally questionable motives of the weekly trade press, ~~public news media~~ reports of my actions are simply matters over which I do not have, should not have, and do not desire, a right of constant review and rebuke.

3/ The New York Times is associated with the Interstate Broadcasting Co., 229 West 43rd Street, New York City (the same address as the Times' home office), licensee of WQXR-AM-FM. Time-Life Broadcasting, Inc., Time & Life Building, Rockefeller Center, New York City, owns and operates KLZ-TV, Denver (KLZ-AM and FM); KOGO-TV, San Diego (KOGO AM and FM); KERO-TV, Bakersfield, California; WOOD-TV, Grand Rapids (WOOD AM and FM); and WFBM-TV, Indianapolis (WFBM AM and FM). Time-Life also holds substantial CATV interests. Post-Newsweek Stations, Inc., 40th and Brandywine Streets, N.W., Washington, D.C., owns WTOP-TV, Washington (WTOP and FM); WJXT-TV, Jacksonville, Florida; WPLG-TV, Miami, Florida; and WCKY-AM, Cincinnati, Ohio.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In re Petition of )  
 )  
REPUBLICAN NATIONAL COMMITTEE )  
for Relief Against )  
 )  
COLUMBIA BROADCASTING SYSTEMS, INC. )  
 )  
TO: The Commission )

PETITION FOR RECONSIDERATION

The Democratic National Committee (DNC), by its attorneys, pursuant to Section 1.106 of the Commission's rules, requests that the Commission reconsider its memorandum Opinion and Order released August 18, 1970 (FCC 70-881), insofar as the order requires the CBS Television Network (CBS) to afford time to the Republican National Committee (RNC) or another partisan Republican spokesman to respond to a July 7, 1970, television presentation by the DNC. In support thereof, it is shown as follows:

DNC Is Aggrieved By the Order.

The July 7 presentation of DNC's viewpoint on several controversial issues of public importance was

designed to reduce the imbalance which had resulted from an unprecedented use of live, nationwide prime time television by the President of the United States.

On June 22, 1970, Dr. Frank Stanton, President of CBS, sent a telegram to Lawrence F. O'Brien, Chairman of DNC, stating that in order to "ACHIEVE FAIRNESS IN THE TREATMENT OF PUBLIC ISSUES" and to redress "THE DISPARITY BETWEEN PRESIDENTIAL APPEARANCES AND THE OPPORTUNITIES AVAILABLE TO THE PRINCIPAL OPPOSITION PARTY," the DNC was being offered twenty-five minutes of free time on CBS "FOR PRESENTATION OF THE COMMITTEE'S VIEWS." In his telegram, Dr. Stanton stated his awareness of the "CUMULATIVE IMPACT OF BROADCAST APPEARANCES OF REPRESENTATIVES OF THE PARTY IN OFFICE" and that this was "PARTICULARLY TRUE OF THE PRESIDENT." Dr. Stanton went on to point out that the offer of time to the DNC was one of a variety of techniques by which CBS sought to assure a fair presentation of competing viewpoints on several issues of public importance, which the President had addressed at length in his frequent television presentations.

DNC accepted Dr. Stanton's offer. On July 7, 1970, at 10:30 p.m. E.D.T., CBS carried the "Local Opposition" broadcast during which Mr. O'Brien, on behalf of DNC, responded for twenty-four minutes to the President's televised viewpoints on seven specific issues of public importance, see <sup>1/</sup>infra, p. 8, et seq.

In addition to affording time on July 7, 1970, Dr. Stanton, in his June 22, 1970, telegram, stated that from time to time during the course of the year CBS would make available free time to the principal opposition party under the overall title "THE LOYAL OPPOSITION." No "Loyal Opposition" programs have been broadcast since July 7, 1970, and none is scheduled before the critical Congressional elections in November. Indeed, under intense pressure from the partisan questioning of the Republican Senate leadership, Dr. Stanton was forced to concede that the network may be reconsidering its policy.

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<sup>1/</sup> The half hour was "filled out" with a five-minute commentary by CBS correspondents Eric Sevareid and Roger Mudd.

In its August 18, 1970 order the Commission held that "fairness requires" CBS to extend time to "RNC or a partisan Republican spokesman, to answer matters raised in the DNC broadcast" (§ 57). Moreover, the order contains far-reaching implications extending beyond the single broadcast. The Commission has strongly suggested that CBS should censor the content of future Loyal Opposition programs. According to the Commission, in permitting the DNC to respond to the President's unfettered televised statements, CBS "would not appear to have exercised journalistic supervision" to assure a fair presentation (§ 55, n. 25).

Thus, DNC is aggrieved by the order on at least three different counts. First, to the extent the "Loyal Opposition" broadcast of July 7 served to reduce the imbalance resulting from the increased use of Presidential prime time television, the effect of the presentation will be vitiated by a rebuttal from RNC or another partisan Republican spokesman. Second, the Commission's ruling will undoubtedly add to the increasing pressures being brought to bear from various sources tending to



inhibit CBS and other networks from future telecasts of Loyal Opposition programs which are necessary to assure the public an opportunity to hear and consider all sides of important public issues. Third, the Commission's call for the networks to censor the content of future "Loyal Opposition" programs will abridge the Democratic Party's constitutionally protected right of free speech.

Why DNC Did Not Participate Earlier.

The order of August 18, 1970, arose from a complaint filed with the Commission against CBS on July 13, 1970. The matter thus arose in an adjudicatory dispute between a complainant and a broadcast network. This was not a rule-making proceeding in which all interested parties were afforded the right to comment. Because the question arose in this context, DNC saw no need to complicate the proceeding by intervening and presenting considerations which would, in large measure, have paralleled those of CBS.

Intervention at this time is warranted because the Commission in its order of August 18 has misconstrued the intentions of the parties and the purposes

underlying the July 7 broadcast and has consequently reached a wholly unjustified conclusion.

The "Factual" Premise of the  
Commission's Order Is Wrong  
and Is Unsupported by the Record. .

The Commission's order is explicitly predicated on the assumption that the July 7, 1970 broadcast of the Chairman of the DNC was in response to five specific Presidential television appearances dealing primarily with the United States' involvement in the war in Indochina. (See, e.g., Dec. ¶¶ 20, 41, 55.) That is not the case. The twenty-four minute broadcast was designed as a partial response to eighteen months of unprecedented prime time Presidential television appearances covering a broad spectrum of controversial issues of public importance.

As in all fairness doctrine cases, the Commission must put the single program in question in perspective with the broadcaster's overall coverage of the issues involved. It is manifest, however, that in considering the RNC complaint, the Commission considered the script of the July 7, 1970 broadcast (appended to the RNC complaint) either in isolation or in light only of the

President's television presentations on the issue of  
the Indochina war.<sup>1/</sup>

To put the twenty-four minute July 7 broadcast in its proper frame of reference, it is necessary for the Commission to consider the following facts:

1. In his first eighteen months in office, President Nixon made thirty-seven live nationwide television appearances, more of them -- fourteen -- in prime time than in any previous eighteen month period in the history of this nation.

2. President Nixon has spent more than seven hours of prime time on all the major networks simultaneously, advocating his viewpoints on numerous controversial public issues of the day at any length he desired in a format he totally controlled.

Thus, the President has used his instant access to the broadcast media to air (a) his veto of a \$20 billion appropriations bill for the Departments of Labor and

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<sup>1/</sup> The Commission stated that the "Presidential addresses have concentrated very largely on the Indochina War issue" (Dec. ¶ 55). To make such a statement grossly oversimplifies a problem of major importance. That the President's appearances during a limited period of time "concentrated largely" on one issue does not negate the indisputable fact that the President has extensively and intensively expounded his partisan views on many other important issues on prime time television.

Health, Education and Welfare, (b) his proposed changes in the nation's welfare legislation, (c) his decision to replace striking Post Office workers with National Guardsmen, and (d) his views on the economy, as well as (e) his views on the war in Indochina.

3. The President has repeatedly taken to prime time television to make blatantly partisan attacks on previous Democratic administrations, the incumbent Democratically-controlled Congress and even individuals who have served in past Democratic administrations.

Thus, for example, the President has said:

- "The previous administration tried, through jawboning . . . to put the blame on business for price increases, the blame on labor for wage increases. It [jawboning] is hypocritical . . . dishonest [and] most important . . . ineffective." (News conference September 26, 1969; Weekly compilation of Presidential Documents, page 1330, column 2)
- "This Congress has the worst record in terms of appropriations bills of any Congress in history." (News Conference December 8, 1969; Weekly Compilation of Presidential Documents, page 1725, column 1)
- "We found that in the year, the full year, in which he [Clark Clifford] was Secretary of Defense, our casualties were the highest of the whole five-year period and, as far as negotiations were concerned, all that had

been accomplished, as I indicated earlier, was that we had agreed on the shape of the table. . . ." (News conference June 19, 1969; Weekly Compilation of Presidential Documents, page 879, column 2)

4. The President, as leader of his political party, has used the occasion of live television to announce his practice of endorsing all Republican nominees for public office. (See News conference June 19, 1969, Weekly Compilation of Presidential Documents, p. 879, column 1)

5. Televised Presidential addresses, because of the prestige of the office and the nature of the medium, command instant and massive attention, respect and belief.

For example, just one of President Nixon's televised press conferences received a Nielsen rating of 48.5%, indicating that he reached almost 50,000,000 Americans. In striking contrast, the July 7 broadcast had a Nielsen rating of 6%, therefore reaching approximately three and half million American households.

The effectiveness of Presidential addresses is also astounding. For example, prior to President Nixon's

nationwide television address announcing the invasion of Cambodia, only 7% of the American public favored that action. After the address, an estimated 50% of the <sup>1/</sup>populace supported the action.

6. Most critically, the networks have permitted virtually no effective reply to any of the viewpoints on controversial issues of public importance contained in the Presidential inundation of the airwaves. They have steadfastly rejected almost every attempt by responsible spokesmen for some modicum of air time to respond to the President's viewpoints on important issues.

Dr. Stanton's June 22, 1970 telegram was a candid admission of this fact and a forthright -- if belated -- attempt to rectify the situation. The offer of time was manifestly intended to afford an opportunity to broadcast the Loyal Opposition's views on several of the public issues of the day which the President had addressed, including, but not limited to, the President's views on the situation in Southeast Asia.

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<sup>1/</sup> See testimony of Senator J. William Fulbright before the Subcommittee on Communications of the Senate Commerce Committee, August 4, 1970, citing results of polls taken by Louis Harris.

The Record Is Barren of Any Evidence  
of Imbalance on Any Issue

DNC recognizes that the fairness doctrine is issue-oriented. If the July 7, 1970 broadcast raised new issues, on which there had not been adequate presentation of competing viewpoints, CBS would have some <sup>1/</sup> obligation under the fairness doctrine.

The Commission cited no issue which was raised for the first time in the Loyal Opposition broadcast of July 7, however. It cited none on which an imbalance was created as a result of the July 7 broadcast. Indeed, none could be cited, because each of the topics covered had previously been dealt with at length by the President on one or more of his prime time television appearances.

The July 7 broadcast dealt with the following seven major public issues: (1) the state of our economy; (2) the nation's crime problem; (3) civil rights for Blacks and other minorities; (4) federal expenditures for defense versus public domestic uses; (5) air

1/ That obligation could, of course, be fulfilled in a variety of ways and not only by affording "RNC or a partisan Republican spokesman" an opportunity to respond.



and water pollution; (6) student dissent and national unity; and (7) the war in Indochina.

The script of the July 7 broadcast included televised words of the President on each of these issues. These excerpts were but a small sampling of the President's televised comments on these issues.

As demonstrated in the appendix hereto, the President has addressed on nationwide television each of the issues much more extensively than the July 7 broadcast permitted the DNC to do. It is, of course, impossible to match in 24 minutes, 434 minutes of prime time statements on a wide spectrum of controversial issues. For example, with respect to the economy, a major subject of the July 7 broadcast, President Nixon had spent more than ten times the amount of time on television discussing this issue than did the Chairman of DNC in the July 7 broadcast. <sup>1/</sup> The gaping imbalance between time

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<sup>1/</sup> It must be noted, too, of course, that the President's words were broadcast simultaneously by all three major commercial television networks while the Democratic Party's words were broadcast by only one network on a summer evening between 10:30 and 11:00 p.m.

devoted to each of the remaining issues in Presidential television appearances and in the July 7 broadcast is also manifest from the appendix.<sup>1/</sup> On each topic, the President had far outdistanced the July 7 broadcast in terms of total television time spent addressing the issue.

The Commission's order of August 18, 1970, is patently inconsistent. In analyzing the claims of the complaining Senators, the Business Executives Move for Vietnam Peace and the Committee for Fair Broadcasting, the Commission correctly insisted on studying the "overall performance" of the network and balancing the number of spokesmen on each side of the issue. On the other hand, in granting the RNC's request, the Commission looked at the July 7 broadcast in isolation and studiously ignored the glaring imbalance which had previously existed.

Thus, the Commission overlooked the fact that there had been virtually no response to any of the President's unprecedented fourteen prime time presentations in a span of 18 months.

<sup>1/</sup> The appendix does not include a comparison of the time spent on the issue of our involvement in Indochina because of the Commission's explicit recognition that the President has spent a significant portion of his television time on this issue.

The Commission overlooked the fact that no member of Congress was permitted to respond on television to the President's charge, in his televised veto of the Labor-HEW bill, that Congress was irresponsibly wasting the taxpayers' money.

The Commission overlooked the fact that certain materially incorrect or misleading televised statements of the President -- dealing with his proposed anti-pollution program, his crime program and the emergency housing legislation -- were left uncorrected in the public's mind because the networks adamantly refused to provide reply time.

Most importantly, the Commission overlooked the fact that no responsible spokesman had been afforded any significant amount of time to present contrasting points of view to the President's numerous televised statements on such pressing issues as the state of our economy, school desegregation, ABM deployment and alleged Congressional in-<sup>1/</sup>action on certain pending Administration proposals.

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<sup>1/</sup> Indeed, CBS refused time to the Senate Majority Leader to respond to the President's June 17, 1970, economic message. In that message, the President charged that Congress was "playing politics with inflation" and chastised the Congress for its failure to act on a litany of economic and social matters.

Thus, the Commission's August 18, 1970, order is defective both in what it considered and in what it did not. With respect to the former, the Commission erroneously and without justification assumed that the July 7, 1970, program was designed to permit DNC to respond to <sup>1/</sup> five specific Presidential addresses on Vietnam. The record is perfectly clear that the broadcast was intended by all concerned to present the Loyal Opposition's views on several important issues which the President had repeatedly addressed on prime time television.

With respect to the latter, the Commission made none of the findings which would be expected in an order holding that a broadcaster had violated the fairness doctrine. It failed to consider any evidence regarding the balance or lack thereof of the network's presentation of the issues which the President had discussed in eighteen months of unprecedented prime time television

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<sup>1/</sup> The Commission also took into consideration the unsupported assumption that a "series of prime time, uninterrupted broadcasts" is to be presented by DNC (Dec. ¶ 52). There is no warrant in the record for the conclusion that there will be any series of broadcasts by DNC and if there is, of course, each presentation can be dealt with in light of the facts surrounding it.

appearances. In failing to balance even one-twentieth of the President's 434 minutes of prime time exposure against the 24-minute July 7 presentation, the Commission erroneously concluded that the DNC's brief program unbalanced 18 months of CBS's presentations on the issues involved. The Commission did not find, and could not find, that DNC raised issues for the first time with respect to which there had not been a full and fair presentation of opposing viewpoints.

In addition to its fundamental legal infirmities, the Commission's order is deeply disturbing because it threatens the very survival of the two-party system in the age of television. This conclusion is inescapable if the prodigious impact of a Presidential television appearance is coupled with the untenable proposition that the party controlling the White House must get two bites at the apple for every one by the out party. The effective expression of the views of the Loyal Opposition is critical to the proper functioning of our democratic process. The Commission's order seriously undermines

the effectiveness of the Loyal Opposition and consequently endangers the viability of the system.

CONCLUSION

In view of the foregoing, the Commission is urged promptly to reconsider its August 18, 1970 opinion and order insofar as it required CBS to afford time to "RNC or a partisan Republican spokesman, to answer matters raised in the DNC broadcast" of July 7, 1970. The July 13, 1970, complaint of the RNC should be dismissed.

Respectfully submitted,

DEMOCRATIC NATIONAL COMMITTEE

By \_\_\_\_\_

David H. Lloyd  
Irvin B. Nathan

1229 - 19th St., N. W.  
Washington, D. C. 20036

Its Attorneys

Of Counsel:

Joseph A. Califano, Jr.  
General Counsel  
National Democratic Committee

August 20, 1970

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## President Nixon

### I. Economy

#### A. Inflation and Recession

Q. Inflation and rising prices, Mr. President, are of great concern. What specific plans do you have to curb them?

THE PRESIDENT. In the meeting of the Cabinet Committee on Economic Policy, which I set up, one of the three new institutions I set up—I say three new institutions—if I might digress for a moment, I suppose the Nation wonders what a President does in his first week and where is all the action that we have talked about. We have done a great deal, particularly in getting the machinery of government set up which will allow us to move in an orderly way on major problems.

I do not believe, for example, that policy should be made, and particularly foreign policy should be made, by ad-hoc-type responses in press conferences, or any other kind of conferences. I think it should be made in an orderly way. So it is with economic policy. That is why, in addition to the Cabinet committee, in addition to the

Because pages 144-191 are illegible in part, they have been reproduced in a separate Supplemental Appendix filed with the Court.

## Mr. O'Brien

Regrettably, the President's expectations have not materialized, and, as so many of you are painfully aware, we have inflation and recession at the same time.

We call it Nixonomics: everything that is supposed to go up -- your income, productivity, housing construction, profits, the stock market -- is going down. Everything that is supposed to go down -- unemployment, interest rates, the cost of living -- is rising.

Every housewife is alarmed over the constant rises in food prices -- hot dogs up 14 cents a pound, hamburger up 12 cents a pound, potatoes up a third -- you know your grocery bill and how much it has gone up in the last year.

Do you know of a family earning less than \$13,000 annually that has been able to buy a home this past year? And even those able to borrow money for a new home know that a \$20,000 house could an additional \$35,000 for interest charged alone -- the highest interest rates in 100 years.

In recent weeks Democrats and Republicans alike have been pleading with President Nixon to use the great powers of his office to stop this recession and inflation war, before more damage is done.

The President must use his great personal influence to roll back inflationary wage and price decisions, just as President Kennedy and President Johnson did on many occasions.

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## I. Economy

### A. Inflation and Recession

I should make one further point. Unless we do control inflation, we will be confronted, eventually, with massive unemployment, because the history of economic affairs in other countries indicates that if inflation is allowed to get out of hand, eventually there has to be a bust and then unemployment comes. So what we are trying to do, with-out, shall we say, too much managing of the economy, is, we are going to have some fine tuning of our fiscal and monetary policies in order to control inflation.

One other point I should make in this respect: I do not go along with the suggestion that inflation can be effectively controlled by exhorting labor and management and industry to follow certain guidelines. I think that is a very laudable objective for labor and management to follow. But I think I am aware of the fact that the leaders of labor and the leaders of management, much as they might personally want to do what is in the best interests of the Nation, have to be guided by the interests of the organizations that they represent.

So the primary responsibility for controlling inflation rests with the national administration, and its handling of fiscal and monetary affairs. That is why we will have some new approaches in this area. We assume that responsibility. We think we can meet it, that we can control inflation without an increase in unemployment.

News Conference, Jan. 27, 1969

Right now -- tonight -- Mr. Nixon could direct the lowering of interest rates on home mortgages, car loans, and the clothes you buy on credit from a department store.

A Democratic Congress gave him this power last year, but unfortunately, he has refused to use it.

I urge the President to act immediately. Please don't wait any longer for our economy to decline even further.

There is probably nothing of greater worry to the American family than the threat of unemployment. At a news conference two months ago a reporter asked the president about this problem.

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Mr. O'Brien

President Nixon

I. Economy

A. Inflation and Recession

Q. But the question about the balance of payments, that's another country. Now with our tax policy, primarily on its way through Congress, are you giving any concern to doing something else--some new moves against rising prices and the rising cost of living or they are looking at the whole in the Federal income?

A. The President, Mr. Smith, it is true that we have rising prices, a rise in the cost of living, and a rise in interest rates at 1 1/2 percent at the last report. However, in looking at the economy, we find that there is really a bad time of about 6 months from the time decisions are made in the economy to a real standpoint within Government and the effect of those decisions on it.

Now, if a policy decision has been made, as a decision in cutting the budget, or decisions in doing for an extension of the supply, and we say it to be extended, and other decisions with regard to tightening of credit. We have made the decision that we have made will begin to have effect within a matter of 2 to 3 months. If our projection proves to be wrong, then we will have to look for the consequences of it, because we cannot allow prices to continue to go up, interest to go up, and the other things which we have decided to continue.

News Conference, June 19, 1969

Q. Mr. President, sir, the small business people of this country are suffering and much more so now because of the high interest rates. I wonder if you have given any thought to organizing a Reconstruction Finance Corporation again?

A. The President. I know that the high interest rates have caused great concern, particularly to the small business people.

I do not believe, however, that a new RFC would necessarily be the approach that would be effective to deal with it. I think the way to get at high interest rates is to get at the cause, as I answered the earlier question put by Mr. Smith. News Conference, June 19, 1969

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## A. Inflation and Recession

Q. Mr. President, on the subject of inflation, a number of economists have said that they do not believe the administration can take the strain out of the economy without exerting pressure on specific price increases, such as the auto increase, the steel price increase, and the others.

Are you considering taking such steps, or do you feel that the corner has already been turned in the battle on inflation?

THE PRESIDENT. I would take these steps if history told me they would work. I would point out, however, that the previous administration tried, through jawboning, as it is called, to put the blame on business for price increases; the blame on labor for wage increases.

In 1956, the guidelines died. They died because when Government, which is the primary agent for increasing prices, fails to do its job, Government asking labor and management to do theirs, it simply won't work. It is hypocritical, it is dishonest, but most important, it is ineffective, because since 1956, as you will note, 1956, 1957, 1958, despite all of the calling of the people to the White House, telling them to hold prices down, hold wages down, prices continued to escalate.

Now, we have attacked the source of the problem. We have cut the budget by \$7 billion. We have mandatory restraints. We have asked for an extension of the surtax rather than its complete elimination. And these have policies which go to the core of the problem, are beginning to work, as Mr. McCracken pointed out in his speech in Detroit yesterday.

Now that the Government has set the example, I believe that labor and management would be well advised to follow the example. I am not jawboning and telling them to reform themselves, when we refuse to reform ourselves. But I do say this: that labor and management labor that asks for exorbitant wage increases, management that raises prices too high, will be pricing themselves out of the market.

Anybody who bets on a continuing inflation will lose that bet, because our Government policies are beginning to work and we are going to stick to these policies until we cut the rise in the cost of living.

## News Conference, Sept. 26, 1969

HENRY KATLOW. Tell me, about the main problem, you, yourself, have outlined in terms of priorities—Vietnam, inflation, cities, crime—are you on schedule in getting somewhere in solving them?

On the inflation front, we have had to take the hard medicine of cutting back on Government spending so that millions of people are going to be able to spend a little more and have more, have their dollars mean more, and we think on the crime area, really the problem is the Congress. The Congress has not given us the tools, but we are going to keep their feet to the fire until we get them.

## Congressional Breakfast

November 5, 1969



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President NixonI. EconomyA. Inflation and Recession

Now, I realize it is tempting to blame someone else for inflation. Some blame business for raising prices.

Some blame unions for asking for more wages.

But a review of the stark fiscal facts of the 1960's clearly demonstrates where the primary blame for rising prices must be placed.

In the decade of the sixties the Federal Government spent \$57 billion more than it took in in taxes.

In that same decade the American people paid the bill for that deficit in price increases which raised the cost of living for the average family of four by \$200 per month in America.

Now millions of Americans are forced to go into debt today because the Federal Government decided to go into debt yesterday. We must balance our Federal budget so that American families will have a better chance to balance their family budgets.

Only with the cooperation of the Congress can we meet this highest priority objective of responsible government.

~~We are on the right track.~~

~~We had a balanced budget in 1969.~~

This administration cut more than \$7 billion out of spending plans in order to produce a surplus in 1970.

In spite of the fact that Congress reduced revenues by \$3 billion, I shall recommend a balanced budget for 1971.

**State of the Union Jan. 22, 1970**

Q. Mr. President, for several days I have been collecting some headlines that sort of point up the question I would like to put to you. I would like to run over some of these headlines with you.

"Balance of trade makes slight progress in 1969." "Circulars ring up record 1969 profits." "Ringling Brothers, 'Big fun', 1969 profits down." "How average hits new low for 3 years." "GNP rise halted." "Ford joins GM and Chrysler in weak outlooks." "Wholesale prices show sharp rise." "U.S. Steel will raise sheet prices February 1."

The question is, how, sir, do you assess the possibility that we may be in for perhaps the worst possible sort of economic conditions—inflation and a recession?

Mr. O'Brien

THE PRESIDENT. Well, Mr. Cornell, the major purpose of our economic policy since we came into office a year ago has been to stop the inflation which had been going on for 5 years without doing it so quickly that it brought on a recession.

Now, as a result, we are now in a position, the critical position, in which the decisions made in the next month or two will determine whether we win this battle.

In my view, the budget that we will announce on Monday, that I understand has received some attention already—but that budget will be a major blow in stopping the inflation psychology. Now, whether we can anticipate now whether we are going to have a recession, as some of those figures that you gave would imply, I would simply say that I do not expect a recession to occur.

Our policies have been planned to avoid a recession. I do expect that the present rate of inflation, which was less in the second half of 1969 than in the first half, will continue to decline and that we will be able to control inflation without recession.

**News Conference, Jan. 30, 1970**

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I. Economy

A. Inflation and Recession

Q. Mr. President, would you tell us what you had in mind a few moments ago when you said that the decisions to be made in the next month or two would determine whether we have inflation or how we go on the road toward greater economic stability?

THE PRESIDENT. I think first we must put this in the context of the action of the Congress just a couple of days ago on the H.W. veto.

I think the significance of that action—and I am not here to gloat over it because what we have to do now is to work together toward getting the right kind of bill that will be noninflationary—but the significance of that action, and it is a signal to the country, is that we are not going to have a runaway Congress and, therefore, not going to have a runaway budget and a runaway inflation.

Now, with this administration submitting a hard budget, not a bargain basement budget—I could have, by a little gimmickery, gotten this down to 199.8 rather than having it 200.7. But 200.8, which is the figure that we finally agreed upon, is a hard figure, it is an honest budget, we can keep it, and we have a surplus which is a real surplus.

Having made these decisions, this means that the Federal Reserve can now consider the fact that we do have fiscal restraint in determining whether or not this is the time to loosen up on monetary policy.

Let me be quite precise in this respect. The Federal Reserve is independent and the new Chairman who will be sworn in here tomorrow is one of the most independent men that I know.

As President of the United States, I am not saying what the Federal Reserve ought to do; I do know, though, that if monetary policy remains too restricted too long, we have a recession, and monetary policy will remain restricted unless the Federal Reserve and those who are in charge of monetary policy are convinced that fiscal policy is responsible. Fiscal policy is responsible and as a result of that I think the time is coming when monetary policy can be relaxed and that would lead to what I mentioned a moment ago.

News Conference, Jan. 30, 1970

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## I. Economy

Young gentlemen or ladies that were admitted to the party, and asked to report for interest, a letter was put in their hands, made for the use of the married folks, and a statement of reception was sent by post not been made to the young men, as to the married folks physical condition, since he perceived that he was reported for admission to the party, and that not be induced until his personality has been thoroughly determined."

## RICHARD NIXON

The Wine Store  
here is 150

Printed with the Office of the United States, 3127  
Jan 16, 1901

## RECOVERY POLICY AND PRODUCTIVITY

02/01/2001 08:59:41 AM

Good night, my love, sweet!

"I wish I could be able to share with you my thoughts on these subjects. *God, Father, my peace, my love.* Teach us to lead into the hearts and the pocketbooks of every family: your job, your income, and your cost of living."

Specifically, I shall announce reforms that will help to move us ahead in our income, and your cost of living. More quickly towards our goal of full employment, economic growth, and permanent peace and stability in the world.

## Learning Objectives:

Let us begin by recognizing these facts:

The American economy is the strongest in the world. This year, the number of Americans who have jobs is the highest in our history. Even allowing for taxes and inflation, the average real income of Americans is higher this year than ever before, in part because of the increase in social security benefits and the reduction of the tax surcharge, which will end entirely this month.

Because of that basic economic strength, we can honestly and confidently face up to our current problems.

Unemployment has increased; the price index continues to rise; corporate earnings have fallen; and the stock market has declined; interest rates are

Today I am presenting a program to deal with these problems. First we should recognize the extent of our economic difficulties. What we are facing here is to deal with the problems of a nation in transition from a wartime economy to a peacetime economy.

Our economy must consequently make adjustments to the great transition from a welfare economy to a free enterprise economy.

One change is that defense spending is on the way down. For the first time in 20 years, the Federal Government is spending more on domestic programs than on national defense.

This year we are spending \$1.7 billion to add defense that we were human resource program and that's a total of \$1.7 billion less. This is a year ago; in the next year, we plan to spend \$1.6 billion less. This is more than a redirection of resources. This is an historic reordering of our national priorities. A

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The cuts in defense spending are a reflection of the opposition to any form of defense spending that is not justified in the interests of the nation. This is a very important point to make, and it is one that we must not lose sight of.

For example, over a period of many years, civilian employees have been reduced in this way. You would think that in this time, civilians in defense spending have been reduced in the same way. But in fact, they have not. They have been reduced in the same way as the military. This is a very important point to make, and it is one that we must not lose sight of.

By the time the transition of this transition, progress toward a peacetime economy is a goal that is far from the horizon. For the defense community, reduction in defense spending gives us more room in the Federal budget to meet human needs at home. It makes it possible to build a much more enduring prosperity in this country.

With its trials and with its hopes, a peacetime economy is clearly on the way. We have already brought home 113,000 from Vietnam. Our success in restoring enemy supply bases in Cambodia has made it possible for us to go forward with the program for withdrawal of 150,000 more men which I announced in my speech of April 20, without jeopardizing the lives of our men who would be brought home after that.

Our scheduled withdrawal of forces from Cambodia by June 30 will be kept. Our scheduled transition from a wartime economy to a peacetime consumer economy will be kept.

While our economy adapts to the reordering of our national priorities and resources, we are undergoing a second great change. We are trying to do something that never has been done before: to avoid a recession while we bring a war of inflation to an end.

This administration took office under a long period in which this Nation lived far beyond its means. In the decade of the sixties, Federal deficits totaled \$57 billion, and the American consumer was forced to pay the piper in terms of a rising spiral of prices.

Seventeen months ago, when this administration took office, we stood at a crossroads of economic policy. There were actually four roads open to us. One was the road of runaway inflation—to do nothing about Government spending and rising prices, to let the boom go on boiling until the bubble burst. That was the road the Nation was taken on in the sixties, and the people who suffer most along that road are the millions of Americans living on fixed incomes.

The road headed in the opposite direction from that one was a possible choice as well. Let the economy "go through the winger," as some suggested, and bring on a major recession.

Well, that would stop inflation abruptly, but at a cost in human terms of broken careers and broken lives that this Nation must never again have to pay.

A third choice was the route of wage and price controls. That would lead to rationing, black marketing, total Federal bureaucratic domination, and it would never get at the real causes of inflation.

That left a fourth choice: to cut down the sharp rise in Federal spending and to rest in the economy firmly and steadily. In that way, prices would slow their rise without too great a hardship on the working-

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1970-71 ECONOMIC OUTLOOK

...the balance of payments... the kind of report... that is the total... we are continuing... on it.

...we have put... the balance of payments... in the economy... in coming... it is the... we pointed out that it... would... pressures... on the economy... that there... the... on the economy... the rise in the cost of living... of our... stop... economy?

Let me put it this way: It is a little like trying to bring a boat into a dock. You turn down the power well before you get to the dock and let the boat coast in. Now if you waited until you reached the dock to turn down the power, you'd see have to try a new dock or a new boat. In the same way, we're heading for the dock of price stability. We have to ease up on the power of our... let our momentum carry us safely into port. That's why our independent central banking system has seen fit to ease up on the money supply. That is why I relaxed the curbs on recently-authorized construction projects and why I have not asked for a new... These actions are not a signal that we are giving up our fight against inflation. On the contrary, they mean that there was already enough power applied to reach the dock and now we'd better make sure that we don't damage the boat. The Federal Reserve's monetary policy which permitted no growth in the money supply at all in the second half of 1969, has now been relaxed. In the past 6 months, the money supply has grown at a rate of about 6 percent a year. The Chairman of the Federal Reserve Board has assured the Nation that there will be enough money and credit to meet future needs, and that the orderly expansion of the economy will not be endangered by a lack of liquidity. Now I'm not asking anyone to put on rose-colored glasses. We are well aware of the forces working against us. To make sure the coming upturn in the economy will not be of the kind that brings on a new surge of inflation, we have gained control of the runaway momentum of Federal spending—the spending that triggered the rise in prices in the first place. In the 3 years before this administration took office, Federal spending rose at an average of 15 percent a year—the sharpest rate of increase since the Korean war. In the current fiscal year, we slashed that rate of increase in half, to 7 percent. And in the coming year, we intend to cut that rate of increase in half again. Now this is not about our... including, as you may recall, the veto of a popular appropriations bill—but it was vital to win the

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January 26, 1972

made to hold down spending so that we could ultimately hold down prices, there is a limit to how much we can do.

I am convinced that the only way to get the economy back on track is to get the inflation under control. That was the cost of living, and that is the only way to get it under control.

However, I have to be realistic about the problem. The momentum of 4 years of inflation was such that it took time to get it under control. The effect on the economy is greater than we have seen. The pace of our progress toward price stability and growth is not as fast as we need it to be.

Now this does not mean that we should stand still in our strategy. It does mean that we must pay heed to economic developments as we move along and adjust our policies accordingly.

While relying heavily on monetary and fiscal tools in general fiscal and monetary policies, I think it is necessary and timely to supplement them with several more specific measures.

Here are the actions I am taking to speed up the fight against inflation:

First, I shall appoint a National Commission on Productivity with representatives from business, labor, the public, and government.

In general, productivity is a measure of how well we use our resources; in particular, it means how much real value is produced by an hour of work. In the past 2 years, productivity has increased far less than usual.

In order to achieve price stability, healthy growth, and a rising standard of living, we must find ways of restoring growth to productivity.

This Commission's task will be to point the way toward this growth in 1970 and in the years ahead. I shall direct the Commission to give first priority to the problems we face now; we must achieve a balance between costs and productivity that will lead to more in the prices.

Productivity in the American economy depends on the effectiveness of management; the investment of capital for research, development, and advanced technology; and most of all on the training and progressive spirit of 60 million working Americans.

To give its efforts the proper base of understanding, the Commission will this summer bring together leaders of business, labor, government, and the general public to meet in a special President's Conference on Productivity.

Second, I have instructed the Council of Economic Advisers to prepare a periodic Inflation Alert. This will spotlight the significant areas of wage and price increases and objectively analyze their impact on the price level. This Inflation Alert will call attention to outstanding cases of price or wage increases and will be made public by the Productivity Commission.

Third, I am establishing a Regulatory and Purchasing Review Board within the Federal Government. Government actions will be reviewed to determine where Federal purchasing and regulations drive up costs and prices; our import policy will be reviewed to see how supplies can be increased to meet rising demand, without losing jobs here at home.

Now let me specifically spell out what I will do and what I will not do. I intend to help focus the attention of business and labor on the need for increased productivity. This is the way for them to serve their own interest while they serve the public interest. This is the only way to make

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## President Nixon

## I. Economy

## The Question of Inflation

more that increases in earnings are not wiped out by the rising cost of living.

This administration is fully prepared to stand up to the example in this past year; we have made that known. The administration is calling for similar action from business and labor to help control inflation.

Now is the time for business and labor to take action. We have more evidence with a more cost of living and it is the time for labor to agree to wage controls to help achieve a new stability of prices.

The fight against inflation is everybody's business. If you are against the national interest, if you continue to insist on a price or wage demand, then you are really against your own best interests and your country's best interests, and that is neither good business nor good bargaining.

If businessmen and workmen are willing to make their fight by lowering their demands, they will help themselves by helping to hold down everybody's cost of living.

I believe there is a new social responsibility growing up in our economic system on the part of unions and corporations. Now is the time for that social concern to take the form of specific action on the wage-price front.

Now, here is what I will not do:

I will not take this Nation down the road of wage and price controls, however, politically expedient that may seem.

Controls and rationing may seem like an easy way out but they are really an easy way in to more trouble—to the explosion that follows when you try to clamp a lid on a rising head of steam without turning down the fire under the pot.

Wage and price controls only postpone a day of reckoning, and in so doing they rob every American of a very important part of his freedom.

Nor am I starting to use controls in disguise. By that I mean the kind of policy whereby Government makes executive pronouncements to enforce "guidelines" in an attempt to elude specific prices and wages without authority of law.

Now I realize that there are some people who get satisfaction out of seeing an individual businessman or labor leader called on the carpet and browbeaten by Government officials. But we cannot protect the value of the dollar by paying the back. That sort of grandstanding distorts attention from the real cause of inflation and it can be a dangerous misuse of the power of Government.

The actions I have outlined today are well within the powers of the President. But there are other actions that the President cannot take alone.

This is not the time for the Congress to play politics with inflation by passing legislation granting the President summary powers to impose wage and price controls. The Congress knows I will not impose controls because they would do more harm than good.

This is the time, however, for Congress and the President to cooperate on a program specifically addressed to help the people who need help most in a period of economic transition from a wartime to a peacetime economy.



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Mr. Speaker, I am pleased to see that

to help those who have lost jobs, I urge the Congress to pass the legislation I have proposed to expand and strengthen our unemployment insurance system. This legislation would cover almost a million more people who lack this protection now, and the system would be made more responsive to changing economic conditions.

I submitted this legislation to the Congress almost a year ago. It is time for the Congress to act. To help those in need of job training, I urge the Congress to pass the Manpower Training Act which provides an automatic increase in manpower training funds in times of high unemployment. I submitted this proposal to the Congress 10 months ago. It is time for the Congress to act.

I ask for full consideration of the Case of Economic Opportunity and I request the Congress to provide at once a supplemental budget of \$50 million to provide useful training and support to young people who are out of school in the summer months.

To further protect the small investor, I support the establishment of an insurance corporation with a Federal backstop to guarantee the investor against losses that could be caused by financial difficulties of brokerage houses. While this would not affect the equity risk that is always present in stock market investment, it will assure the investor that the stability of the securities industry itself does not become cause for concern.

To relieve the worries of many of our older citizens living on fixed incomes, I urge the Congress to pass my proposal to tie social security benefits to the cost of living. This proposal, passed by the House, awaiting Senate action for the past month, will keep the burden of the fight against inflation from falling on those least able to afford it.

To stimulate an industry bearing the brunt of high interest rates, I urge enactment of the Emergency Home Finance Act of 1970. This would attract as much as \$5 billion into the housing market in the coming fiscal year. More than a third of a million families need this legislation for home financing now; and the resulting new construction of more than 200,000 houses will also help provide many new jobs.

This housing bill was passed unanimously by the Senate. It has been awaiting action for 3 months in the House. It is time for the Congress to act.

To help the small businessman who finds it difficult to get necessary credit, I have asked the Congress for greater authority for the Small Business Administration to stimulate banks and others to make loans to small businesses at lower interest rates. I submitted this legislation to the Congress 3 months ago. It is time for the Congress to act.

To strengthen our railroad industry, and to help for legislation that will enable the Department of Transportation to provide emergency assistance to railroads in financial difficulties, I am also urging the Independent Interstate Commerce Commission to give prompt attention to the urgent financial problems of this industry.

And finally, to curb inflationary pressures throughout our economy, I call upon the Congress to join me in holding down Government spending to avoid a large budget deficit. This requires a new restraint on

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## I. Economy

THE NEW YORK TIMES, JANUARY 13, 1970

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MONDAY, APRIL 22, 1946

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We are working toward a system that will give every man and woman the right to a good job and equal opportunity for every man and woman to build a good career.

We are working toward a system that will replace the old way and bring with it a new era of economic growth within our capacity to produce efficiently.

And we are working toward a system that will deliver a higher standard of living to a people living in peace.

That is the large object of a free enterprise system—not managed by government and not limited by government, but helped by a government that creates the climate for peace, healthy growth.

As we move toward this a peacetime economy, I am confident that we will achieve the only kind of prosperity that counts—the prosperity that lasts, the prosperity that can be shared by every American.

Thank you and good afternoon.

NOTE: The President spoke at 12 noon in his office at the White House. His remarks were broadcast on radio and television.

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Mr. O'Brien

## Economy

### **B. Unemployment**

Q. Mr. President, on a domestic subject, the economy of the Government is, the stock market is down, things are depressed, the country is depressed. Do you have any views on that, especially concerning the budget?

Yes, unemployment reduced the demand for you have any more. I don't know. Yes, unemployment reduced the demand for you have any more. I don't know.

of the economy and our fight against inflation. We believe, however, that, as we look to the balance of the year, that we will begin to see a turning up in our gross national product in the last of the second quarter and throughout the third and fourth quarters. I believe that by the end of the year we will have passed the tradition of a 4 per cent rate of growth of GNP. I believe that the year 1970 will be a record year economically, a year in which unemployment will be at a low level, below the average that we have seen in the past, which was much too high.

**News Conference, May 8, 1970**

However, we have to face some difficult problems. The momentum of 4 years of inflation was stronger than had been anticipated. The effect on unemployment is greater than we forecast. The pace of our progress toward price stability and high employment has not been quick enough.

**Address on Economics,  
June 17, 1970**

As the President said, it is partly a matter of perspective that 5.7 percent unemployment rate mentioned in the early 1960s reflected a steadily declining rate of unemployment, a decline from the high of 7 percent which President Kennedy inherited from the Eisenhower-Nixon administration of the 1950s.

The fact is that unemployment fell during the 1960s and it was down to 3.3 percent in December, 1968. It has climbed steadily since President Nixon took office. Since last December, we have experienced the fastest five-month rise in unemployment since the recession in the late 1950s. But beyond this, instead of talking statistics and percentages, let's remember that more than four million seven hundred thousand Americans are out of work tonight.

Let's look at another major concern and see what candidate Nixon promised -- and what has happened since he took office.

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## II. Crime

Q. Mr. President, you talked quite a bit during the campaign about crime in the District of Columbia. We have had quite a bit of it since January 1st, and I wondered how you proposed to deal with it.

THE PRESIDENT. Mr. Healy, it is a major problem in the District of Columbia, as I found when I suggested to the Secret Service I would like to take a walk yesterday. I had read Mary McGreevy's column and wanted to try her chocolate. But I find, of course, that taking a walk here in the District of Columbia, and particularly in the evening hours, is now a very serious problem, as it is in some other major cities.

One of the employees at the White House, just over the weekend, was the victim of a purse snatching, which brings it very close to home.

Incidentally, I might point out in that case that my advisers tell me that by feeling that the area is better off, that perhaps the possibility of purse snatching and other crimes in the vicinity of the White House is reduced. Therefore, we have turned on the lights in all of that area, I can assure you. [Laughter]

But to be quite specific with regard to the District of Columbia, it was not only a major commitment in the campaign; it is a major concern in the country. I noted

an editorial in one of the major papers, the New York Times, for example, that Washington, D.C. was now a city of "fear and crime." That may go too far, but at least that was their judgment. All three of the Washington papers indicate great concern.

Consequently, I have on an urgent basis instructed the Attorney General to present to me a program to deal with crime in the District of Columbia, and an announcement of that program and also an announcement as to what we will ask the Congress to do, in addition to what we will do administratively will be made at the end of this week. News Conference, Jan. 27, 1969

BARRACK WALTENS. Mr. President, here with your congressional supporters, I wonder if you can comment on how you feel you have fared in general with Congress, what your greatest success is and perhaps what your biggest disappointment has been with them.

Now when you get to the domestic issues, the crime package that I referred to, and the inflation package, and the tax bill, and the rest, it is a little harder, but that is the way the game is played. But I am going to fight just as hard as I can here, because this Nation wants this Congress to get to work and give us the tools to deal with narcotics, and deal with crime, to deal with all of these problems. We cannot do it until we get this legislation passed.

## Congressional Breakfast November 5, 1969

Of course every new President has the power to appoint his own Attorney General, but what has been the record of the Attorney General President Nixon appointed?

Eighteen months have passed. The crime rate in this country has not gone down. In the first three months of this year it rose 15 percent over the same period last year. And it is especially alarming that the fastest rates of increase are now in the suburbs and in rural areas of our country.

The way to stop rising crime is not to blame others, such as Congress. The way to stop the rising crime rate is to help local and state law enforcement agencies who carry the major burden.

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President NixonII: Crime

in referring to "crime", there is one area where I have ordered an increase rather than a cut—that is the requests of those agencies with the responsibilities for law enforcement.

We have heard a great deal of overblown rhetoric during the sixties in which the word "war" has perhaps too often been used—the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word "war" is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives.

We have a tragic example of this problem in the Nation's Capital, for whose safety the Congress and the Executive have the primary responsibility. I doubt if many members of this Congress who live more than a few blocks from here would dare leave their cars in the Capitol garage and walk home alone tonight.

Last year this administration sent to the Congress thirteen separate pieces of legislation dealing with organized crime, pornography, street crime, narcotics, crime in the District of Columbia.

None of these bills has reached my desk for signature.

I am confident that the Congress will act now to adopt the legislation I placed before you last year. We in the Executive have done everything we can under existing law, but new and stronger weapons are needed in that fight.

While it is true that State and local law enforcement agencies are the cutting edge in the effort to eliminate street crime, burglaries, murder, my proposals to you have embodied my belief that the Federal Government should play a greater role in working in partnership with these agencies.

That is why 1971 Federal spending for local law enforcement will double that authorized for 1970.

The primary responsibility for crimes that affect individuals is with local and State rather than with Federal Government. But in the field of organized crime, narcotics, pornography, the Federal Government has a special responsibility it should fulfill, and we should make Washington, D.C., where we have the primary responsibility, an example to the Nation and the world of respect for law rather than lawlessness.

State of the Union Message  
January 22, 1970

Mr. O'Brien

That's how the President addressed the crime problem in his State of the Union Message last January. What action has followed those farsighted words?

The facts are that the Nixon Administration budget requires one thousand dollars from every one of you -- every American -- to run the government. Of that one thousand dollars, the Administration has earmarked only \$2.40 to assist state and local governments in the fight against crime -- cutting the democratic program in half.

And, while I am sure the President and the Attorney General want to reduce crime, I cannot understand why they have refused to support further improvements in the Safe Streets Act advocated by a Democratic President and enacted by a Democratic Congress in 1968 -- our major federal anti-crime program. They are improvements that would give cities with the greatest crime problems the most help.

I regret that so many of the top law enforcement experts brought to Washington by the Nixon Administration last year have now resigned, because, as they said, Attorney General Mitchell has refused to do what must be done to control the growing crime rate in America.

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### III. Civil Rights for Blacks and Other Minorities

No man can be fully free while his neighbor is not. To go forward at all is to go forward together.

This means black and white together, as one nation, not two. The laws have caught up with our conscience. What remains is to give life to what is in the law: to insure at last that as all are born equal in dignity before God, all are born equal in dignity before man.

Inaugural Address, Jan. 20, 1969

Q. Mr. President, there has been conflicting speculation about the extent to which your administration will seek to advance school desegregation. Could you tell us what your policy will be on that, specifically including the so-called "freedom of choice" plan?

THE PRESIDENT. That was a subject, as you will recall, from having covered me in the campaign, that I addressed myself to on several occasions.

First, as far as freedom of choice is concerned, freedom of choice must be defined in terms of what it does. If freedom of choice is found to be simply a subterfuge to perpetuate segregation, then funds should be denied to such a school system. If a freedom of choice plan, however, is found to be one which actually is bringing an end to segregation, then a freedom of choice plan, in my opinion, is appropriate and should receive funds.

As far as school segregation is concerned, I support the law of the land. I believe that funds should be denied to those districts that continue to perpetuate segregation. I think that what we have here is a very difficult problem, however, in implementing it. One is our desire, a desire that was emphasized by Dr. Allen, to keep our schools open, because education must receive the highest priority. The other is our desire to see to it that our schools are not segregated.

That is why I have, in discussing this with Secretary Finch and with Dr. Allen, urged that before we use the ultimate weapon of denying funds and closing a school, let's exhaust every other possibility to see that local school districts comply with the law. News Conference, Feb. 6, 1969

One of the biggest disappointments of the first 18 months of the Nixon Administration has been precisely this failure to match its words with deeds -- to provide new opportunities for minority citizens, opportunities that must ultimately benefit all Americans.

Again, a number of experts brought to Washington by the Nixon Administration have resigned. They recognized this performance gap.

The failure to define clearly the policy for school desegregation has led to confusion in local school systems, and growing resentment and discouragement by families seeking equal educational opportunities for their children.

Above all, in the past 18 months we have been denied the strong moral leadership on this issue which only the White House can provide -- that is must provide. We have lacked a President speaking forthrightly about the moral rightness of making the guarantees of the Constitution a reality for every American.

Again, Congress has had to take the lead -- in overcoming the Administration's obstacles to renewing the Voting Rights Act, a law that provides all Americans with the most basic of democratic rights as well as extending the right to vote to 18-year-olds.

The times call for a new vision of our priorities. The President seemed to understand this when he addressed the nation last month.



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Mr. O'BrienPresident NixonIII. Civil Rights for Blacks and Other Minorities

Q. Mr. President, do you agree with those who say that you and your administration have a serious problem with distrust among the blacks, and whether you agree that it is one of your more serious problems or not, could you tell us specifically what you are doing to deal with what some consider to be this distrust among the blacks?

THE PRESIDENT. I am concerned about this problem; and incidentally, let me make it very clear that those who have raised this question are not simply those who are political opponents. My Task Force on Education pointed up that I was not considered—I think the words they used—as a friend by many of our black citizens in America.

I can only say that, by my actions as President, I hope to rectify that. I hope that by what we do in terms of dealing with the problems of all Americans, it will be made clear that the President of the United States, as an elected official, has no State constituency. He has no congressional constituency. He does not represent any special group. He represents all the people. He is the friend of all the people.

Putting it another way—as a lawyer—the President is the counsel for all the people of this country, and I hope that I can gain the respect and I hope eventually the friendship of black citizens and other Americans.

News Conference, Feb. 6, 1969

Q. Mr. President, in staffing your administration, you have so far made about 200 high-level Cabinet and other policy position appointments, and of these only three have gone to women. Could you tell us, sir, whether we can expect a more equitable recognition of women's abilities, or are we going to remain a lost sex?

THE PRESIDENT. Would you be interested in coming into the Government? [Laughter.]

Very seriously, I had not known that only three had gone to women, and I shall see that we correct that imbalance very promptly.

News Conference, Feb. 6, 1969

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### III. CIVIL RIGHTS FOR Blacks and Other Minorities

Q. Mr. President, sir, many civil rights groups are saying that your policy on school desegregation amounts to a retreat from the Supreme Court decision of 15 years ago. Some even say this amounts to an effort to build a party base for the Republicans in the South.

A. Where do you stand on school segregation and how much more time do you think it takes that haven't been applied ought to have?

THE PRESIDENT. This is a very difficult problem. I would say first that we have had a lot of criticism from the South insofar as our integration and desegregation policies are concerned, as well as from the groups to which you refer.

It seems to me that there are two extreme groups. There are those who want instant integration and those who want segregation forever. I believe that we need to have a middle course between these two extremes. That is the course on which we are embarked. I think it is correct.

As I evaluate the situation this year, I found that there are twice as many schools that are desegregated at the opening of this term as was the case at the opening of the term a year ago. I think that is progress.

Now one other point that should be made. I do not consider that it is a victory for integration when the Federal Government cuts off funds for a school and thereby for both black and white students in that school, denies them the education they should have. That is not a victory for anybody. It is a defeat for education.

I believe, therefore, that that particular device should be used as we currently are using it; only when it is absolutely necessary for the purpose of achieving our objective of desegregated education. We are for it, but we are going to avoid both extremes.

News Conference, Sept. 26, 1969

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President Nixon

III. Civil Rights for Blacks and Other Minorities

Q. Going back to your response to the school desegregation question, it is now 15 years since the Supreme Court made its decision. How much longer do you think school segregation should be allowed to exist anywhere in the country?

THE PRESIDENT. Only as long as is absolutely necessary to achieve two goals -- to achieve the goal of desegregated schools without, at the same time, irreparably damaging the goal of education now for the hundreds of thousands of black and white students who otherwise would be harmed if the move toward desegregation closes their schools.

Q. Mr. President, in connection with the school desegregation, one of the most controversial cases has been the action that the Government took in Mississippi in deciding to ask for a further postponement of some of the school integration there.

There have been published reports that Senator John Stennis of Mississippi informed the administration that if the school integration went through there, he might not be able to handle the administration's defense bill, and that you, yourself, made the decision.

Would you tell us whether these reports are true, whether Senator Stennis did so inform the administration, and your connection, if any, with this Mississippi case?

THE PRESIDENT. Senator Stennis did speak to me, along with several other representatives from Mississippi, with regard to his concern on this problem. But anybody who knows Senator Stennis and anybody who knows me would know that he would be the last person to say, "Look, if you don't do what I want in Mississippi, I am not going to do what is best for this country."

, News Conference, Sept. 26, 1969

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### III. Civil Rights for Blacks and Other Minorities

Q. Mr. President, yesterday in Chicago, your Assistant Secretary of Labor, Mr. Fletcher, tried to hold some hearings about getting more blacks into the construction unions, and he was prevented from doing so.

I wonder if you could tell us, first of all, your reaction to that specific situation in Chicago, and, secondly, your general feeling about getting more blacks into the trade unions?

Mr. President: Relating first to the second part of the question, it is essential that black Americans, all Americans, have an equal opportunity to get into the construction unions. There is a shortage in construction workers.

The interest of the Nation requires this, apart from the matters of simple justice which are involved.

Second, in this respect, we have, as you know, the Philadelphia Plan. We have had our problems in Philadelphia which are presently being discussed through our mediation, at least discussed, although it is still a very volatile situation. And now, of course, we have the problem in Chicago.

We intend to continue through the Department of Labor to attempt to make progress in this field, because in the long run, we cannot have construction unions which deny the right of all Americans to have those positions.

America needs more construction workers, and, of course, all Americans are entitled to an equal right to be a member of a union.

News Conference, Sept. 26, 1969

Q. Before the Supreme Court ordered immediate school integration, you said you preferred a middle road policy, that is between segregation forever and instant integration.

What is your policy now?

Mr. President: To carry out what the Supreme Court has laid down. I believe in carrying out the law even though I may have disagreed as I did in this instance with the decree that the Supreme Court eventually came down with. But we will carry out the law.

News Conference, Dec. 8, 1969

Third, we must adopt reforms which will expand the range of opportunities for all Americans. We can fulfill the American dream only when each person has a fair chance to fulfill his own dreams. This means equal voting rights, equal employment opportunity, and new opportunities for expanded ownership. Because in order to be secure in their human rights, people need access to property rights.

State of the Union Message  
January 22, 1970

Q. Mr. President, how do you feel you stand, now that you have been in office a year, in terms of having the confidence and trust of the black people in this country?

Mr. President: I have been concerned. Mr. Kaphow, about polls and statements by some black leaders and some white leaders who purport to speak for black people, to the effect that while the administration seems to be doing rather well among most of the American people, that we do not have the confidence that we should have among black people.

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Mr. O'BrienPresident NixonIII. Civil Rights for Blacks and Other Minorities

Let me, however, respond to what I intend to do about that in this way: I think the problem we confronted when we came in was a performance gap with regard to black people in America--big promises and little action and, as a result, immense frustration which flared into violence.

Now I know all the words. I know all the gimmicks and the phrases that would win the applause of black audiences and professional civil rights leaders. I am not going to use them. I am interested in deeds. I am interested in closing the performance gap. If we can get our welfare reform, if we can stop the rise of crime which terrorizes those who live in our central cities, if we can move on the programs that I mentioned with regard to rural America where 52 percent of the black people live, if we can provide the job opportunity and the opportunity for business enterprise for black people and other minority groups that this administration stands for, then when I finish office I would rather be measured by my deeds than all of the fancy speeches I may have made. I think then that black people may approve what we did. I don't think I am going to win them with the words.

News Conference, Jan. 30, 1970

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#### IV. Defense Spending Versus Domestic Spending

Q. Mr. President, do you support Dr. Allen's statement of yesterday that he believes massive aid to urban schools is necessary?

A. The President. Well, I support the proposition that there needs to be a massive infusion of assistance to education. Let me make one thing very clear in that respect, so that you can get my thinking directly. You will note yesterday that I supported a \$10 million increase in the funds for the National Science Foundation, which will go to higher education.

I believe higher education needs more assistance, too. But at the present time the great need is in the area described by educators of "K through 12," kindergarten through the 12th grade—preparing students in these years for the higher education which is now available to virtually every student who is capable of meeting the standards for getting into college.

As far as Dr. Allen's method of doing so, I do not believe that he, sophisticated as he is as the superintendent of a State school system, would suggest that we go around the States. We cannot do that because the cities and the school systems within a State cannot exist without the State government.

However, the area of need is primarily in the city school system. We will try to meet that problem as best we can.

**News Conference, Feb. 6, 1969**

Q. Mr. President, your safeguard ABAM system, I understand, would cost about \$1 billion less in the coming fiscal year than the plan which President Johnson sent up. Will this give you the opportunity to reduce the surcharge or will the continued high level of taxation be needed for the economy?

A. The President. That question will be answered when we see the entire budget. Secretary Laird will testify on the defense budget on Wednesday.

Incidentally, my understanding at this time, and I have seen the preliminary figures, is that the defense budget that Secretary Laird will present will be approximately \$29 1/2 billion less than that submitted by the previous administration.

The President says he favors this change in our priorities. But it was Congress, not the President, that cut five-and-a-half billion dollars from the Pentagon budget. And when Congress tried to channel loss than a quarter of that money into educational and health programs, libraries, books, student loans -- the President responded with a nationally televised veto message.

In that same week when Mr. Nixon vetoed the education and health bill as inflationary, he announced a new multibillion dollar spiral in the nuclear arms race. Why wasn't this just as inflationary, if not more so?

Only a few days ago Congress overrode another Nixon veto and so restored funds to build desperately needed hospitals and mental health facilities for the nation's sick people. The President turned down this bill because he said it was inflationary. But more than two-thirds of Congress -- including a majority of the members of the Republican Party -- voted to allocate for hospitals some of the money cut from the budget.

**National priorities? Let's consider again each American's thousand dollar share of the nation's budget: \$4.50 for air and water pollution; \$5.00 for urban renewal for our cities; \$7.50 for elementary and secondary education; 50 cents for training the handicapped -- and \$375.00 for the military.**

Once again, we must look to Congress for leadership. It was Congress that more than doubled President Nixon's initial request for an increase in social security, providing a badly needed 15 percent increase. And just this week, your paychecks will be larger because a Democratic Congress voted to increase personal tax exemptions and eliminated the 5 percent surtax.

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President Nixon

Mr. O'Brien

IV. Defense Spending Versus Domestic Spending

Whether after considering the defense budget and all of the other budgets that have been submitted, we then can move in the direction of either reducing the surcharge or move in the direction of some of our very difficult problems with regard to our cities, the problem of hunger and others—these are the options that I will have to consider at a later time.

News Conference, March 14, 1969

So I ask you tonight: Who is really engaged in a "historic reordering of our national priorities" -- the Congress or the President?

One of our most urgent priorities for this decade is cleaning up our environment. Most of you heard the President speaking to this problem in his State of the Union Message this past January.



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the new direction we believe are necessary to achieve this important national goal.

For a memorandum from the President to heads of departments and agencies and for the text of his Executive order on equal employment opportunity in the Federal Government, see the preceding two items.

### Tax Reform Bill

*Statement by the President Following Passage of the Bill by the House of Representatives. August 2, 1949*

In my message to Congress on April 21, I stated that "we shall never make taxation popular, but we can make taxation fair."

1949

The tax reform bill just passed by the House of Representatives is a long step in that direction. Not only did the House adopt, in essence, the administration's proposed minimum income tax and low income allowances, but it also added many constructive reforms to the 16 we proposed initially.

I am much aware of the many hours of cooperative labor that went into the preparation of this bill. To me this is further proof that the administration and the Congress, even in a time of politically divided government, can work constructively together to advance the national interest.

While the administration will have some suggestions in the Senate on certain specifics of this bill, I strongly endorse its passage by the House and commend the principal architects of the bill on the House Ways and Means Committee.

## THE PRESIDENT'S ADDRESS TO THE NATION ON DOMESTIC PROGRAMS

*Text of the President's Address on a New Family Assistance System, on Job Training and Placement, on the Office of Economic Opportunity, and on Revenue Sharing. August 2, 1969*

As you know, I returned last Sunday night from a trip around the world—a trip that took me to eight countries in 9 days.

The purpose of this trip was to help lay the basis for a lasting peace, once the war in Vietnam is ended. In the course of it, I also saw once again the vigorous efforts so many new nations are making to leap the centuries into the modern world.

Here in the United States, we are more fortunate. We have the world's most advanced industrial economy, the greatest wealth ever known to man, and the fullest measure of freedom ever enjoyed by any people, anywhere.

Yet we, too, have an urgent need to modernize our institutions—and our need is no less than theirs.

We face an urban crisis, a social crisis—and at the same time, a crisis of confidence in the capacity of government to do its job.

A third of a century of centralizing power and responsibility in Washington has produced a bureaucratic monstrosity, cumbersome, unresponsive, and ineffective.

A third of a century of social experiment has left us a legacy of entrenched programs that have outlived their time or outgrown their purposes.

A third of a century of unprecedented growth and change has strained our institutions, and raised serious questions about whether they are still adequate to the times.

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## President Nixon's Statement of Domestic Issues - August 8, 1969

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It is no accident, therefore, that we find increasing skepticism—and not only among the young, but among citizens everywhere—about the continuing capacity of government to master the challenges we face.

Nowhere has the failure of government been more tragically apparent than in its efforts to help the poor, and especially in its system of public welfare.

## TACERT: RETROAM

Since taking office, one of my first priorities has been to repair the machinery of government, and put it in shape for the 1970s. I have made many changes designed to improve the functioning of the executive branch. I have asked Congress for a number of important structural reforms: among others, a wide-ranging postal reform, a comprehensive draft reform, a reform of the present confusing hodge-podge of Federal programs, and reform of the present confusing hodge-podge of Federal grants-in-aid. Last April 21 I sent Congress a message asking for a package of major tax reforms, including both the closing of loopholes and the removal of more than 2 million low-income tax-paying families from the tax rolls entirely. I am glad Congress is acting now on tax reform; I hope it acts soon on the other reforms as well.

The purpose of all these reforms is to eliminate unfairness; to make government more effective as well as more efficient; and to bring an end to its chronic failure to deliver the service that it promises.

My purpose tonight, however, is not to review the past record, but to present a new set of reforms—a new set of proposals—a new and drastically different approach to the way in which government cares for those in need, and to the way the responsibilities are shared between the State and Federal governments.

I have chosen to do so in a direct report to the people because these proposals call for public decisions of the first importance; because they represent a fundamental change in the Nation's approach to one of its most pressing social problems; and because, quite deliberately, they also represent the first major reversal of the trend toward ever more centralization of government in Washington. After a third of a century of power flowing from the people and the States to Washington, it is time for a New Federalism in which power, funds, and responsibility will flow from Washington to the States and to the people.

During last year's election campaign, I often made a point that touched a responsive chord wherever I traveled.

I said that this Nation became great not because of what government did for people, but because of what people did for themselves.

This new approach aims at helping the American people do more for themselves.

It aims at getting everyone able to work off welfare rolls and onto payrolls. It aims at ending the unfairness in a system that has become unfair to the welfare recipient, unfair to the working poor, and unfair to the taxpayer.

This new approach aims to make it possible for people—wherever in America they live—to receive their fair share of opportunity. It aims to ensure that people receiving aid, and who are able to work, contribute their fair share of productivity.

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This new approach is embodied in a package of four measures: first, a complete replacement of the present welfare system; second, a comprehensive new job training and placement program; third, a revamping of the Office of Economic Opportunity; and fourth, a start on the sharing of the Federal tax revenues with the States.

Next week—in three messages to the Congress and one statement—I will spell out in detail what those measures contain. Tonight I want to explain what they mean, what they are intended to achieve, and how they are related.

#### WELFARE

Whether measured by the anguish of the poor themselves, or by the drastically mounting burden on the taxpayer, the present welfare system has to be judged a colossal failure.

Our States and cities find themselves sinking in a welfare quagmire, as caseloads increase, as costs escalate, and as the welfare system stagnates enterprise and perpetuates dependency. What began on a small scale in the depression thirties has become a monster in the prosperous sixties. The tragedy is not only that it is bringing States and cities to the brink of financial disaster, but also that it is failing to meet the elementary human, social, and financial needs of the poor.

It breaks up homes. It often penalizes work. It robs recipients of dignity. And it grows.

Benefit levels are grossly unequal—for a mother with three children, they range from an average of \$263 a month in one State, down to an average of \$29 in another State. So great an inequality is wrong; no child is "worth" more in one State than in another. One result of this inequality is to lure thousands more into already overcrowded inner cities, as unprepared for city life as they are for city jobs.

The present system creates an incentive for desertion. In most States, a family is denied welfare payments if a father is present—even though he is unable to support his family. In practice, this is what often happens: a father is unable to find a job at all, or one that will support his children. To make the children eligible for welfare, he leaves home—and the children are denied the authority, the discipline and the love that come with having a father in the house. This is wrong.

The present system often makes it possible to receive more money on welfare than on a low-paying job. This creates an incentive not to work; it also is unfair to the working poor. It is morally wrong for a family that is working to try to make ends meet to receive less than the family across the street on welfare. This has been bitterly resented by the man who works, and rightly so—the rewards are just the opposite of what they should be. Its effect is to draw people off payrolls and onto welfare rolls—just the opposite of what government should be doing. To put it bluntly and simply—any system which makes it more profitable for a man not to work than to work, and which encourages a man to desert his family rather than stay with his family, is wrong and indefensible.

We cannot simply ignore the failures of welfare, or expect them to go away. In the past 8 years, 3 million more people have been added to the welfare rolls—all in a period of low unemployment. If the present trend continues, another 4 million will have joined the welfare rolls by

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President Nixon's Statement of Domestic Issues - August 8, 1969

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1975. The financial cost will be crushing; the human cost will be suffocating.

I propose that we abolish the present welfare system and adopt in its place a new family assistance system. Initially, this new system would cost more than welfare. But unlike welfare, it is designed to correct the condition it deals with and thus to lessen the long-range burden.

Under this plan, the so-called "adult categories" of aid—aid to the aged, the blind, and disabled—would be continued, and a national minimum income set for families with children. The Federal Government would not pay for the cost of additional State payments above that minimum.

But the program now called "Aid to Families with Dependent Children"—the program we normally think of when we think of "welfare"—would be done away with completely. The new family assistance system I propose in its place rests essentially on three principles: equality of treatment, a work requirement, and a work incentive.

Its benefits would go to the working poor, as well as the nonworking; to families with dependent children headed by a father, as well as to those headed by a mother; and a basic Federal minimum would be provided, the same in every State.

I propose that the Federal Government build a foundation under the income of every American family with dependent children that cannot care for itself—wherever in America that family may live.

For a family of four now on welfare, with no outside income, the basic Federal payment would be \$1,600 a year. States could add to that amount and most would do so. In no case would anyone's present level of benefits be lowered. At the same time, this foundation would be one on which the family itself could build. Outside earnings would be encouraged, not discouraged. The new worker could keep the first \$60 a month of outside earnings with no reduction in his benefits, and beyond that his benefits would be reduced by only 50 cents for each dollar earned.

By the same token, a family head already employed at low wages could get a family assistance supplement; those who work would no longer be discriminated against. A family of five in which the father earns \$2,000 a year—which is the hard fact of life for many families—would get family assistance payments of \$1,200 for a total income of \$3,200. A family of seven earning \$3,000 a year would have its income raised to \$1,500.

Thus, for the first time, the government would recognize that it has no less of an obligation to the working poor than to the nonworking poor; and for the first time, benefits would be scaled in such a way that it would always pay to work.

With such incentives, most recipients who can work will want to work. This is part of the American character.

But what of the others—those who can work but choose not to?

The answer is very simple.

Under this proposal, everyone who accepts benefits must also accept work or training provided suitable jobs are available either locally or at some distance if transportation is provided. The only exceptions would be those unable to work, and mothers of preschool children. Even mothers of preschool children, however, would have the opportunity to work—be-



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centers to make it possible for mothers to take jobs by which they can support themselves and their children.

This national floor under incomes for working or dependent families is not a "guaranteed income." Under the guaranteed income proposal, everyone would be assured a minimum income, regardless of how much he was capable of earning, regardless of what his need was, regardless of whether or not he was willing to work.

During the presidential campaign last year I opposed such a plan. I oppose it now, and will continue to oppose it. A guaranteed income would undermine the incentive to work; the family assistance plan increases the incentive to work. A guaranteed income establishes a right without responsibility; family assistance recognizes a need and establishes a responsibility. It provides help to those in need, and in turn requires that those who receive help work to the extent of their capabilities. There is no reason why one person should be taxed so that another can choose to live idly.

In States that now have benefit levels above the Federal floor, family assistance would help ease the States' financial burdens. But in 20 States—those in which poverty is most widespread—the new Federal floor would be above present average benefit levels, and would mean a leap upward for many thousands of families that cannot care for themselves.

#### MANPOWER TRAINING

Next, let me turn to the job training proposals that are part of our full opportunity concept. America prides itself on being the "land of opportunity." I deeply believe in this ideal.

Full opportunity means the chance for upward mobility on every rung of the economic ladder—and for every American, no matter what his handicaps of birth.

The cold, hard truth is that a child born to a poor family has far less chance to make a good living than a child born to a middle-income family.

He is born poor, fed poorly; and if his family is on welfare, he starts life in an atmosphere of handout and dependency; often he receives little preparation for work and less inspiration. The wonder of the American character is that so many have the spark and drive to fight their way up. But for millions of others, the burden of poverty in early life stifles that spark.

The new family assistance would provide aid for needy families; it would establish a work requirement, and a work incentive; but these in turn require effective programs of job training and job placement—including a chance to qualify not just for any job, but for good jobs, that provide both additional self-respect and full self-support.

Therefore, I am also sending a message to Congress calling for a complete overhaul of the Nation's manpower training services.

The Federal Government's job training programs have been a terrible tangle of confusion and waste. They are overcentralized, overcastrated; with good reason, many young people wonder why the Federal Government cannot take money out of one program that has too few applicants and use it instead to expand another that has too many. They wonder why they have to accept training programs they have no interest in, instead of ones they care about. They want to be treated as human beings, not cogs in a machine.

To remedy the confusion, arbitrariness and rigidity of the present system, the new Manpower Training Act would basically do three things...

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- It would pull together the jumble of programs that currently exist, and equalize standards of eligibility.
- It would provide flexible funding—so that Federal money would follow the demands of labor and industry, and flow into those programs that people most want and need.
- It would decentralize administration, gradually moving it away from the Washington bureaucracy and turning it over to States and localities.

In terms of its symbolic importance, I can hardly overemphasize this last point. For the first time, *applying the principles of the New Federalism, administration of a major established Federal program would be turned over to the States and local governments*, recognizing that they are in a position to do the job better.

For years, thoughtful Americans have talked of the need to decentralize government. The time has come to begin.

Federal job training programs have grown to vast proportions, costing more than a billion dollars a year. Yet they are essentially local in character. As long as the Federal Government continues to bear the cost, they can perfectly well be run by States and localities—and that way they can better be adapted to specific State and local needs.

What I propose is not a sudden dumping of these programs on unprepared local authorities, but rather a careful, phased transfer, with benchmarks of readiness and incentives for performance. If States and localities decline to pick up the responsibility, the Federal Government will continue to manage the programs. If they try and fail, the Federal Government can resume the responsibility. We should trust the American capacity for self-government enough to try. The only way to bring about decentralization is to do it, and this is the place to begin.

The Manpower Training Act will have other provisions specifically designed to help move people off welfare rolls and onto payrolls:

- A computerized job bank would be established, to match job-seekers with job vacancies.
- For those on welfare, a \$30 a month bonus would be offered as an incentive to go into job training.
- For heads of families now on welfare, 150,000 new training slots would be opened.
- As I mentioned previously, greatly expanded day-care center facilities would be provided for the children of welfare mothers who choose to work. However, these would be day-care centers with a difference. There is no single ideal to which this administration is more firmly committed than to the enriching of a child's first 5 years of life, and thus helping lift the poor out of misery at a time when a lift can help the most. Therefore, these day-care centers would offer more than custodial care; they would also be devoted to the development of vigorous young minds and bodies. As a further dividend, the day-care centers would offer employment to many welfare mothers themselves.

Office of Economic Opportunity

One common theme running through my proposals tonight is that of providing full opportunity for every American. A second theme is that of

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trying to equip every American to play a productive role. A third is the need to make government itself workable—which means reshaping, reforming, innovating.

The Office of Economic Opportunity is an innovative agency—and thus it has a vital place in our efforts to develop new programs and apply new knowledge. But in order to do effectively what it can do best, OEO itself needs reorganization.

In the past, OEO suffered from a confusion of roles, and from a massive attempt to do everything at once, with the same people performing many conflicting functions: coordinating old programs, doing new research, setting up demonstration projects, evaluating results, and serving as advocates for the poor. As a result, inefficiency, waste, and recruitment too often clouded the record of even its best accomplishments.

If the Administration has made a thorough study of OEO, we have assigned it a leading role in the effort to develop and test new approaches to the solving of social problems. OEO is to be a laboratory agency, where new ideas for helping people are tried on a pilot basis. When these prove successful, they can be "spun off" to operating departments of agencies—just as the space agency, for example, "spun off" the weather satellite and the communications satellite when these proved successful. Then OEO will be free to concentrate on breaking even newer ground.

OEO has a broad charter: not only to help make opportunity real, but to search out ways of making institutions more responsive, and to get behind the effects of poverty to the causes of poverty. These goals are fundamental commitments of this administration.

The OEO reorganization to be announced next week will stress its innovative role. It also will stress accountability, a clear separation of functions, and a tighter, more effective organization of field operations.

#### REVENUE SHARING

We come now to a proposal which I consider profoundly important to the future of our Federal system of shared responsibilities. As we look ahead to the 1970's and the 1980's, it also is vital in terms of ensuring that States and localities can continue to do their part in dealing with the kinds of social problems I have been discussing tonight.

When we speak of poverty or jobs or opportunity, or making government more effective or getting it closer to the people, it brings us directly to the financial plight of our States and cities.

We can no longer have effective government on any level unless we have it on all levels. There is too much to be done for the cities to do it alone, or for the States to do it alone—or for Washington to do it alone.

For a third of a century, power and responsibility have flowed toward Washington—and Washington has taken for its own the best sources of revenue.

We intend to reverse this tide, and to turn back to the States a greater measure of responsibility—not as a way of avoiding problems, but as a better way of solving problems. Along with this should go a share of Federal revenues. I shall propose to the Congress next week that a set portion of the revenues from Federal income taxes be remitted directly to the States—with a minimum of Federal restrictions on how those

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dollars are to be used, and with a requirement that a percentage of them be channeled through for the use of local governments.

The funds provided under this program will not be great in the first year. But the principle will have been established, and the amounts will increase as our budgetary situation improves.

As we look ahead to the complex tasks of the seventies, as we contemplate the diversity of this vast and varied country, it is clear beyond question that effective, responsive government will require not one center of power, but many. This start on revenue sharing is a step toward the New Federalism. It is a gesture of faith in America's States and localities, and in the principles of democratic self-government.

With this revenue sharing proposal, we follow through on a commitment I made in the last campaign; we follow through on a mandate which the electorate gave us last November—after nearly 40 years of moving power from the States to Washington, we begin in America a decade of decentralization, a shifting of power away from the center whenever it can be used better locally.

In recent years, we all have concentrated a great deal of attention on what we commonly call the "crisis of the cities." These proposals I have made are addressed in part to that, but they also are focused much more broadly.

They are addressed to the crisis of government—to adapting its structures and making it manageable.

They are addressed to the crisis of poverty and need—which is rural as well as urban. This administration is committed to full opportunity on the farm as well as in the city; to a better life for rural America; to ensuring that government is responsive to the needs of rural America. These proposals will advance those goals.

I have discussed these four matters together because together they make both a package and a pattern. They should be studied together, debated together, seen in perspective.

These proposals will be controversial. They also are expensive. Let us face that fact frankly and directly.

The first-year costs of the new family assistance program, including the child care centers and job training, would be \$4 billion. I deliberated long and hard over whether we could afford such an outlay. I decided in favor of it for two reasons: because the cost would not begin until fiscal 1971, when I expect the funds to be available; and because I concluded that this is a reform we cannot afford not to undertake. The cost of continuing the present system, in financial as well as human terms, is staggering if projected into the 1970's.

Revenue sharing would begin in the middle of fiscal 1971, at a half-year cost of a half billion dollars. This cut into the Federal budget, but it represents relief for the equally hard-pressed States. It would help curb the rise in State and local taxes.

Overall, we would be spending more—in the short run—to help people who now are poor and who now are unable to work or unable to find work.

I see it this way: Every businessman and every working man knows what "start-up costs" are. They are a heavy investment made in early



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The investment in these proposals is a human investment; it also is a "start-up cost" in turning around our dangerous decline into well-being. We cannot produce productive people with the antiquated, wheezing, overboard machine we now call the welfare system.

If we fail to make this investment in work incentives now, if we merely try to patch up the system here and there, we will only be pouring good money after bad in ever-increasing amounts.

If we do invest in this modernization, the heavily-burdened taxpayer at least will see the light at the end of the tunnel. And the man who now looks ahead only to a lifetime of dependency will see hope for a life of work and pride and dignity.

In the final analysis, we cannot talk our way out of poverty; we cannot legislate our way out of poverty; but this Nation can work its way out of poverty. What America needs now is not more welfare but more "workfare."

The task of this Government, the great task of our people, is to provide the training for work, the incentive to work, the opportunity to work, and the reward for work. Together, these measures are a first long step in that direction.

For those in the welfare system today, or struggling to fight their way out of poverty, these measures offer a way to independence through the dignity of work.

For those able to work, these measures provide new opportunities to learn work and to find work.

For the working poor—the forgotten poor—these measures offer a fair share in the assistance given to the poor.

The new system establishes a direct link between the Government's willingness to help the needy, and the willingness of the needy to help themselves.

It removes the present incentive not to work, and substitutes an incentive to work; it removes the present incentive for families to break apart, and substitutes an incentive for families to stay together.

It removes the blatant inequities, injustices, and indignities of the welfare system.

It establishes a basic Federal floor, so that children in any State can have at least the minimum essentials of life.

Together, these measures cushion the impact of welfare costs on States and localities, many of which have found themselves in fiscal crisis as costs have spiraled.

They bring reason, order, and purpose into a tangle of overlapping programs, and show that government can be made to work.

Poverty will not be defeated by a stroke of a pen signing a check; it will not be reduced to nothing overnight with slogans or ringing exhortations.

Poverty is not only a state of income. It is also a state of mind and a state of health. Poverty must be conquered without sacrificing the will to work, for if we take the route of the permanent handout, the American character will itself be impoverished.

In my recent trip around the world, I visited countries in all stages of economic development; countries with different social systems, different economic systems, different political systems.

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In all of them, however, I found that one event had caught their imagination and lifted their spirits almost beyond measure: The trip of Apollo to the moon and back. On that historic day when the astronauts set foot on the moon, the spirit of Apollo II truly swept the world—a spirit of peace and brotherhood and adventure, and a spirit that thrilled to the knowledge that man had dreamed the impossible, dared the impossible, and done the impossible.

Abolishing poverty, putting an end to dependency—like reaching for the moon a generation ago, that may be impossible. But in the spirit of Apollo, we can lift our sights and marshal our best efforts. We can resolve to make this the year, not that we reached the goal, but that we turned the corner: From a dismal cycle of dependency toward a new birth of independence; from despair toward hope; from an ominously mounting importance of government toward a new effectiveness of government—and toward a full opportunity for every American to share the bounty of this rich land.

NOTE: The President delivered the address on nationwide radio and television at 10 p.m. As printed above, this item follows the advance text, which carried the notation: "Because of TV time limitations, there may be minor deletion of this text on delivery. The President stands by the full text as printed above."

Federal Maritime Commission

Statement by the President Upon Announcing His Intention To Nominate Mrs. Helen D. Bentley as Member and Chairman August 9, 1969

In nominating Helen Bentley as a member of the Federal Maritime Commission, I am conscious of the fact that in one way at least, this nomination is unique. Mrs. Bentley has earned a very strong position for herself in what most of us would feel to be "a man's world"—the world of maritime affairs. A maritime editor of the Baltimore Sun, she has won the respect of all who have followed her and management alike—in this field and in other fields—by her professional excellence and by her established record of professional excellence supported by any maritime event in the country.

Although we are at the beginning of the age of space, it is good to be reminded that the United States is a sea power, a nation that has grown and prospered over the years because of our maritime trade with every corner of the earth and because our ports have been recognized as some of the best in the world.

Helen Bentley knows the world of maritime trade. She has not only reported it from a dock at the Baltimore Sun; she has traveled all over the world to the great seaports, she has sailed on ships and learned much of their operation at first hand. She knows that maritime trade,

which has played such an important part in the development of civilization in every past, is still an important area today.

She knows—perhaps better than anyone else—the complexity and professionally important world of the sea and its influence on the strength and growth of our Nation.

Although Mrs. Bentley is well aware that she is being nominated to this post solely on her very considerable merits as a maritime expert, it would be less than candid of me not to say how gratified I am to be able to nominate a woman to such an important position.

There was once a time when, I suppose, there was a bit of consideration involved in appointing a woman to an important position. That day is gone. Mrs. Bentley is representative of the extremely well-qualified women we have been able to bring into Government service. As a knowledgeable lady in a man's world, she has gained a reputation for being the best there is. That, in the long run, is what we are looking for in any position, and I am doubly glad that in Mrs. Bentley we find that the best there is also just happens to be a charming and wonderful lady.

And now I would like to add one important point: Upon Mrs. Bentley's confirmation by the Senate, it is my intention to designate her as chairman of the Maritime Commission.

NOTE: For biographic data concerning Mrs. Bentley, see the fact book, page 1113.

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IV. Defense Spending versus Domestic Spending

O. Mr. President, I would like White House Conference on Food and Nutrition strongly recommended approval of a bill which is passed the Senate to form the food stamp program that is blocked in the House and another bill which would reform the school lunch program which has passed the House, but is blocked in the Senate.

Your administration is reported to be lobbying against both bills. Will you follow the recommendations of your White House Conference, and what course of action will you take?

The President, I favor the approach that our administration has put before the Congress as being the more reasonable approach on both scores. I will, of course, consider the recommendations of the White House Conference, which will be made to me at my request within approximately 30 days.

There is another recommendation by the White House Conference which I, unfortunately, cannot give really sympathetic consideration to, and that is the one recommending a \$5.125 minimum for a family of four in America. That would cost approximately \$70 billion to \$80 billion in taxes, or \$70 billion to \$80 billion in increased prices. Now, I do not say that to discredit the Conference.

I simply say that all of us in this country want to end hunger in the United States. All of us want the poor to have a minimum floor, and that minimum to be as high as possible.

All of us, for example, want social security to be higher. But when I consider all of these matters, I have to think also of this fact: the fact that I, as President, am the one who has the primary responsibility for the cost of living in this country.

Referring a moment ago to the tax question, it would be very easy for me to sign a bill which reduces taxes. But if I sign the kind of a bill which the Senate is about to pass, I would be reducing taxes for some of the American people and raising the prices for all the American people.

I will not do that.

News Conference, Dec. 8, 1969

Mr. Klagdon.

But I can assure you that not only to prevent, but to stay within a balanced budget requires some very hard decisions. It means rejecting spending programs which would benefit some of the people when their net effect would result in price increases for all the people.

It is time to cut paying good money into bad programs. Otherwise, we will end up with bad money and bad programs.

I recognize the political popularity of spending programs, particularly in an election year. But unless we stop the rise in prices, the cost of living for millions of American families will become unbearable and government's ability to plan programs for progress for the future will become impossible.

State of the Union Message,

January 22, 1970

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## IV. Defense Spending versus Domestic Spending

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## HEW-LABOR-DEO APPROPRIATIONS BILL

*Remarks of the President in a Radio and Television Address on His Veto of the Bill, January 26, 1970*

*Good evening, my fellow Americans:*

I would like to share with you tonight a decision that is one of the most difficult decisions I have made since I assumed the Office of the Presidency a year ago.

I have here on my desk a bill, a bill which has been passed by the Congress and sent to me for signature. For the first time, I am exercising tonight the constitutional power of the President to veto a bill and send it back to the Congress for further consideration.

This decision is particularly difficult because this bill provides funds for the Department of Health, Education, and Welfare.

Now let us clearly understand the issue. The issue is not whether some of us are for education and health and others are against it.

There are no gods which I consider more important for this Nation than to improve education and to provide better health care for the American people.

The question is: How much can the Federal Government afford to spend on these programs this year?

In April I asked the Congress to appropriate more for the Department of Health, Education, and Welfare than it has ever appropriated before. This means that this year the Federal Government will spend 13 percent more on programs for health, education, and welfare than it spent last year. For Federal programs that affect education, we will spend over \$10 billion. Now in this bill that I have before me, the Congress has increased the amount that I recommended by \$1 billion 260 million. Over \$1 billion of this increase is in the field of education.

Now, why, in an election year, particularly, would a President hesitate for one moment to sign a bill providing for such politically popular causes as this one? The reason is this: The President of the United States has an obligation to consider all the worthy causes that come before him and he is to consider them having in mind only one principle: What is best for all the people of the United States?

I believe that the increase over the amount that I recommended, the increase which is contained in this bill passed by the Congress, is not in the best interests of all the American people, because it is in the wrong amount for the wrong purposes and at the wrong time.

Let me address myself first to the questions of the amount of spending involved.

This Nation faces a crisis which directly affects every family in America-- the continuing rise in the cost of living. From 1960 to 1970, the cost of living went up 23 percent in this country. Now, for the average family of four in America that meant an increase of \$2,100 a year in the items that go into your cost of living--your grocery bills, your housing, your transportation, your medical costs.

A major reason for this increase in the cost of living is that in that same 10-year period from 1960 to 1970, the Federal Government spent \$57 billion more than it took in in taxes.

I think this was wrong. That is why as your President I intend to do everything that I can to see that the Federal Government spends less in



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MONDAY, FEBRUARY 2, 1970

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Washington so that you can have more to spend at home. If we are to stop the rise in the cost of living which is putting such a strain on the family budgets of millions of Americans, we have to cut the Federal budget.

That is why I ordered cuts of \$7 billion in Federal spending in 1970. That is why, for example, the budget I will submit to Congress for 1971 will call for a smaller percentage of Federal spending for defense than in any year since 1950.

For the first time in 20 years the budget will provide more funds for human resources than for defense.

Now, if I approved the increased spending contained in this bill, I would win the approval of many fine people who are demanding more spending by the Federal Government for education and health. But I would be surrendering in the battle to stop the rise in the cost of living, a battle we must fight and win for the benefit of every family in this Nation.

A second reason I am vetoing this bill is that I believe that it increases spending for the wrong purposes. The increased spending authorized by Congress for the most part simply provides more dollars for the same old programs without making the quality of education and health care in America.

I believe that when we consider how much we are putting into education in the United States, that we are entitled to get more out in terms of better quality in education. That is why in my education message which I shortly will be submitting to the Congress I will propose a new and searching look at our American school system. In this examination we will look at such basic questions as why millions of our children in school are unable to read adequately; we will put emphasis on improving the quality of education for every child in America.

An example of the unfairness of this bill is the Impaired Aid Program which is supposed to help areas which need assistance because of the presence of Federal installations. The bill provides \$6 million for the one-half million people who live in the richest county in the United States, and only \$3 million for the three million people that live in the 100 poorest counties in the United States.

President Eisenhower, President Kennedy, President Johnson all criticized this program as being unfair. And yet the Congress in this bill not only perpetuates this unfair program, it adds money to it.

The third reason I am vetoing this bill is because it requires the money to be spent at the wrong time. We are now nearly three-quarters of the way through the school year. This bill forces us to spend the money it appropriates—and we would have to spend it all before June 30.

When money is spent in a hurry, a great deal is wasted. There is no good time to waste the taxpayers' money, but there is no worse time to waste it than today.

The Congress will determine on Wednesday whether it will sustain or override my veto of this legislation. If the veto is sustained, I will immediately seek appropriations which will assure the funds necessary to provide for the needs of the Nation in education and health.

You can be sure that no school will need to be closed. No school child will be denied an education as a result of the action I take tonight. I will work with the Congress in developing a law that will ease the transition to education reform and do so without inflation.

I realize that a number of Congressmen and Senators, as well as many who are members of what is called the education lobby, disagree

impair aid  
schools

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President NixonIV. Defense Spending versus Domestic Spending

## WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS

with the views I have expressed tonight. I respect their different viewpoints. I deeply share the concern of those who want more funds for education and for health and for other worthy causes in this country.

But it is my duty to act on behalf of the millions of Americans, including teachers and students, as well as patients in our hospitals, who will pay far more in the rise in the cost of living than they will receive from the increased spending provided for in this bill.

We spend more for health and education than any nation in the world. We are able to do this, and I hope we can continue to do so in the future, because we have the great good fortune to be the richest nation by far in the whole history of the world.

But we can spend ourselves poor. That is why no matter how popular a spending program is, if I determine that its enactment will have the effect of raising your prices or raising your taxes, I will not approve that program.

Now, for these reasons, for the first time, tonight, instead of signing a bill which has been sent to me by the Congress, I am signing this veto message. My fellow Americans, I believe this action is in the long-range interests of better education and improved health care. But most important, I believe that this action that I have just taken is in the vital interests of all Americans in stopping the rise in the cost of living.

Thank you, and good night.

NOTE: The President spoke at 9 p.m. in his office at the White House. For the text of the President's veto message, see the following item.

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#### IV. Defense Spending versus Domestic Spending

One change is that defense spending is on the way down. For the first time in 20 years, the Federal Government is spending more on human resource programs than on national defense.

This year we are spending \$1.7 billion less on defense than we were a year ago; in the next year, we plan to spend \$3.2 billion less. This is more than a redirection of resources. This is an historic reordering of our national priorities.

##### New housing bill program:

To provide more help now to those workers who have lost jobs, I urge the Congress to pass the legislation I have proposed to expand and strengthen our unemployment insurance system. This legislation would cover almost 5 million more people who lack this protection now, and the system would be made more responsive to changing economic conditions.

I submitted this legislation to the Congress almost a year ago. It is time for the Congress to act.

To help those in need of job training, I urge the Congress to pass the Manpower Training Act which provides an automatic increase in manpower training funds in times of high unemployment. I submitted this proposal to the Congress 10 months ago. It is time for the Congress to act.

I ask for full appropriation for the Office of Economic Opportunity and I request the Congress to provide at once a supplemental budget of \$50 million to provide useful training and support to young people who are out of school in the summer months.

To further protect the small investor, I support the establishment of an insurance corporation with a Federal backstop to guarantee the investor against losses that could be caused by financial difficulties of brokerage houses. While this would not affect the equity risk that is always present in stock market investment, it will assure the investor that the stability of the securities industry itself does not become cause for concern.

To relieve the worries of many of our older citizens living on fixed incomes, I urge the Congress to pass my proposal to tie social security benefits to the cost of living. This proposal, passed by the House, awaiting Senate action for the past month, will keep the burden of the fight against inflation from falling on those least able to afford it.

To stimulate an industry bearing the brunt of high interest rates, I urge enactment of the Emergency Home Finance Act of 1970. This would attract as much as \$8 billion into the housing market in the coming fiscal year. More than a third of a million families need this legislation for home financing now; and the resulting new construction of more than 200,000 houses will also help provide many new jobs.

This housing bill was passed unanimously by the Senate. It has been awaiting action for 3 months in the House. It is time for the Congress to act.

To help the small businessman who finds it difficult to get necessary credit, I have asked the Congress for greater authority for the Small Business Administration to stimulate banks and others to make loans to small businesses at lower interest rates. I submitted this legislation to the Congress 3 months ago. It is time for the Congress to act.

To strengthen our railroad industry, I am asking for legislation that will enable the Department of Transportation to provide emergency assistance to railroads in financial difficulties. I am also urging the independent Interstate Commerce Commission to give prompt attention to the urgent financial problems of this industry.

And finally, to curb inflationary pressures throughout our economy, I call upon the Congress to join me in holding down Government spending to avoid a large budget deficit. This requires a new restraint on

spending programs and the passage of the revenue-producing measures that I have already made.

**Address on Economics,**

**June 17, 1970**

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President Nixon

V. Air and Water Pollution

Q. Mr. President, may I ask you two questions about the disaster in Santa Barbara. One, the Secretary Hickel's actions so far accord with your policies; and two, what implications does this disaster have for future conservation policy here?

A. THE PRESIDENT: Well, answering the second part of your question first, I have found that for 15 years we have not had any updating of our policies with regard to offshore drilling. Secretary Hickel has now initiated a study within the Department for updating those regulations so that this kind of incident will not occur again.

With regard to the action that he has taken, I think he acted promptly in temporarily stopping the drilling and then insisting on very stringent requirements on the Union, Oil Company and others involved so that this would not happen.

Looking to the future however, we have got to get at the source of the problem. That means very stringent regulations in offshore drilling, because there isn't any question that if the companies involved will make the necessary expenditures in setting up their wells offshore, there is minimal danger of this kind of an activity.

News Conference, Feb. 6, 1969

THE GREAT QUESTION of the seventies is, shall we surrender to our surroundings, or shall we make our peace with nature and begin to make reparations for the damage we have done to our air, to our land, and to our water?

According to its natural state is a cause beyond party and beyond factions. It has become a common cause of all the people of this country. It is a cause of particular concern to young Americans, because they more than we will reap the grim consequences of our failure to act on programs which are needed now if we are to prevent disaster later.

Clean air, clean water, open spaces—these should once again be the birthright of every American. If we act now, they can be.

Mr. O'Brien

That is what President Nixon said he would propose, and to many it seemed an impressive call for action. But the fact is that the 10 billion dollar program he promised calls for federal spending of only four billion dollars. The amount Mr. Nixon proposed for the first year of his new program to fight water pollution turned out to be less than Congress had already authorized.

And so, 18 months later, the pattern of the Nixon Administration's domestic program is abundantly clear -- ringing calls for action, but few results, except when Congress takes the initiative and calls the shots.

But our attention to our critical domestic priorities continues to be diverted by the seemingly endless struggle in Indochina, about which the President addressed the nation on April 30.



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We still think of air as free. But clean air is not free, and neither is clean water. The price tag on pollution control is high. Through our years of past carelessness we incurred a debt to nature, and now that debt is being called.

The program I shall propose to Congress will be the most comprehensive and costly program in this field in America's history.

It is not a program for just one year. A year's plan in this field is no plan at all. This is a time to look ahead not a year, but 5 years or 10 years—whatever time is required to do the job.

I shall propose to this Congress a \$10 billion nationwide clean waters program to put modern municipal waste treatment plants in every place in America where they are needed to make our waters clean again, and do it now.

We have the industrial capacity, if we begin now, to build them all within 5 years. This program will get them built within 5 years.

As our cities and suburbs relentlessly expand, those priceless open spaces needed for recreation are inaccessible to their people are swallowed up—often forever. Unless we preserve these spaces while they are still available, we will have none to preserve. Therefore, I shall propose new financing methods for purchasing open space and parklands, now, before they are lost to us.

The automobile is our worst polluter of the air. Adequate control requires further advances in car design and fuel composition. We shall intensify our research, set increasingly strict standards, and strengthen enforcement procedures—and we shall do it now.

We can no longer afford to consider air and water common property, free to be abused by anyone without regard to the consequences. Instead, we should begin now to treat them as scarce resources, which we are no more free to contaminate than we are free to throw garbage into our neighbor's yard.

This requires comprehensive new regulations. It also requires that, to the extent possible, the price of goods should be made to include the costs of producing and disposing of them without damage to the environment.

Now I realize that the argument is often made that there is a fundamental contradiction between economic growth and the quality of life, so that to have one we must forsake the other.

The answer is not to stifle growth, but to redirect it. For example, we should turn toward ending congestion and eliminating smog the same reservoir of inventive genius that created them in the first place.

It has been said that no matter how many national parks and historical monuments we buy and develop, the truly significant environment for each of us is that in which we spend 80 percent of our time—in our homes, in our places of work, the streets over which we travel. Street litter, rundown parking strips and yards, dilapidated fences, broken windows, smoking automobiles, dingy working places, all should be the object of our fresh view.

We have been too tolerant of our surroundings and too willing to leave it to others to clean up our environment. It is time for those who make massive demands on society to make some minimal demands on themselves. Each of us must resolve that each day he will leave his home, his property, the public places of the city or town a little cleaner, a little better, a little more pleasant for himself and those around him.

With the help of people we can do anything. Without their help we can do nothing. In this spirit, together, we can reclaim our land for ours and generations to come.

Between now and the year 2000, over 100 million children will be born in the United States. Where they grow up—and how—will, more than any one thing, measure the quality of American life in these years ahead.

This should be a warning to us.

For the past 30 years our population has also been growing and shifting. The result is exemplified in the vast areas of rural America emptying out of people and of promise—a third of our counties lost population in the sixties.

The violent and decayed central cities of our great metropolitan complexes are the most conspicuous area of failure in American life today.

I propose that before these problems become insoluble, the Nation develop a national growth policy.

In the future, government decisions as to where to build highways, locate airports, acquire land, or sell land should be made with a clear objective of aiding a balanced growth for America.

In particular, the Federal Government must be in a position to assist in the building of new cities and the rebuilding of old ones.

At the same time, we will carry our concern with the quality of life in America to the farm as well as the suburb, to the village as well as to the city. What rural America needs most is a new kind of assistance. It needs to be dealt with, not as a separate nation, but as part of an overall growth policy for America. We must create a new rural environment which will not only stem the migration to urban centers, but reverse it. If we seize our growth as a challenge, we can make the 1970's an historic period when by conscious choice we transformed our land into what we want it to become. **State of the Union, Jan. 22, 1970**

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## President Nixon

### VI. Student Dissent and National Unity

The simple things are the ones most needed today if we are to surmount what divides us, and cement what unites us.

To lower our voices would be a simple thing.

In these difficult years, America has suffered from a fever of words; from inflated rhetoric that promises more than it can deliver; from angry rhetoric that fans discontents into hatreds; from bombastic rhetoric that postures instead of persuading.

We cannot learn from one another until we stop shouting at one another—until we speak quietly enough so that our words can be heard as well as our voices.

For its part, government will listen. We will strive to listen in new ways—to the voices of quiet anguish, the voices that speak without words, the voices of the heart—to the injured voices, the anxious voices, the voices that have despaired of being heard.

Those who have been left out, we will try to bring in.

Those left behind, we will help to catch up.

For all of our people, we will set as our goal the decent order that makes progress possible and our lives secure.

As we reach toward our hopes, our task is to build on what has gone before—not turning away from the old, but turning toward the new. Inaugural Address, Jan 20, 1969

## Mr. O'Brien

Like most of you, I applauded the appeal for lowered voices and national unity when Richard Nixon assumed the Presidency 18 months ago.

Good evening. I'm Larry O'Brien, national Chairman of the Democratic Party. I managed the Democratic campaign for President in 1968. And I recognized after the election that we all had to turn away from the narrow confines of partisanship and work in the active pursuits of national reconciliation.

But today the divisions within our society are far greater than they were 18 months ago.

I don't have any easy answers. But the American people are not afraid to face problems squarely, and I know you want facts.

In this spirit, then, the loyal opposition has the responsibility to ask: Now, in fact, are we being governed? What progress are we making as a nation? How can we do better? How can the nation and our two-party system meet the challenge of the '70s? How can we achieve the goals the new President set forth in his Inaugural Address 18 months ago?

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## VI. Student Dissent and National Unity

Q. You demonstrated a great deal of interest, Mr. President, in young people in your discussions both public and private abroad. Do you feel that those discussions have given you a better understanding of young people abroad, and are their problems similar to the problems of young people in this country?

THE PRESIDENT. Well, the problems differ, of course, in the different countries. I think they are the same in one respect. The young people abroad, it seems, have somewhat the same problem as many young people here. They know what they are against, but they find difficulty in knowing what they are for. This is not unusual, because this is perhaps something that is common to young people generally, except that when we look to the revolutions of the past, the revolutionary movements, usually there has been—whether we agreed with those movements or not—there was something, a philosophy, that the young people who supported the revolutions were for. All over Europe this seems to be the case—a young generation against the established institution, against the way the universities are run, and yet not having a sense of purpose, a sense of direction, a sense of idealism.

I feel that that is part of the problem here in the United States, and I think that much of the responsibility rests not on the young people for not knowing what they are for, but on older people for not giving them the vision and the sense of purpose and the idealism that they should have.

In talking—and I talked with every leader about this, every one—all of us are concerned about it. All of us feel that we must find for this great Western family of ours a new sense of purpose and idealism—one that young people will understand that they can be for.

That is not a satisfactory answer, because I am not able to describe it yet, but, believe me, we are searching for it.

News Conference, March 4, 1969

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Mr. O'BrienPresident NixonVI. Student Dissent and National Unity

Q. Mr. President, I wonder if I could turn to the campus disorders and unrest. They are continuing and we haven't had an opportunity to ask you your views of them. But particularly, would you favor the cutting off of Federal loans to the offenders?

THE PRESIDENT. Mr. Jagan, I have asked the Attorney General and the Secretary of Health, Education, and Welfare to examine this problem, particularly in view of a Congressional report that 122 of the 540 who had been arrested at San Francisco State were direct recipients of Federal funds.

I will have a statement on that that I will be making either Monday or Tuesday, in detail. I would prefer not to go into it now. News Conference, March 14, 1969

Q. What is your answer, sir, to the report presented to you yesterday by the group of Republican Senators on campus unrest?

THE PRESIDENT. It was a very thoughtful report by men who do not have the problem of the generation gap. They are young and vitally interested in these problems, and they gave me a lot of information that is essential for this administration to have in mind as it develops a program to deal with campus unrest.

With regard to what our problem is, I would like to point out, however, that I can not support the legislative proposal in the House of Representatives which would sharply cut off funds from any college or university in which there was a demonstration. This would be cutting off our resources for education and it would be just what the demonstrators wanted, because we do not want the Federal Government to be taking in a bad reputation for discipline in our colleges and universities in this country.

The responsibility for discipline in colleges and universities is not a Federal responsibility. It is a responsibility which I have asked the Attorney General to develop, if he can, new legal remedies that might be available to college administrators to use where violent or lawless acts occur on the campus. The responsibility should be theirs. The Government's role should be to help them meet that responsibility. News Conference, June 19, 1969



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Q. What is your view, sir, concerning the student movement and other campus demonstrations being planned for this fall against the Vietnam war?

THE PRESIDENT. I have often said that there is really very little that we in Washington can do with regard to running the university and college campuses of this country. We have enough problems running the Nation, the national problems.

Now, I understand that there has been and continues to be opposition to the war in Vietnam on the campuses, and also in the Nation. As far as this kind of activity is concerned, we expect it. However, under no circumstances will I be affected whatever by it.

#### News Conference, Sept. 26, 1969

Q. To broaden that a little bit, on November 3 you called for support for your policies in Vietnam. You since received a response that some of your aides feel is gratifying.

My question is, however, have you not with the help of Vice President Agnew, and I am referring to some of his recent speeches, purchased this support at the cost of alienating a sizable segment of the American public and risking polarization of the country?

THE PRESIDENT. Well, Mr. Sample, one of the problems of leadership is to take a position. I like to be liked. I don't like to say things that everybody doesn't agree with.

When peace marchers come to Washington it would be very easy to say that I agree with them and I will do what they want. But a President has to do what he considers to be right, right for the people, right, for example, in pursuing a just peace—not just peace for our time, for a little time.

I believe that I pursued that path. I do not believe that that is a disservice to the public interest, because I believe that sometimes it is necessary to draw the line clearly, not to have equity against those who disagree, but to make it clear that there can be no compromise where such great issues as self-determination and freedom and a just peace are involved.

#### News Conference, Dec. 8, 1969

Q. Getting back to the polarization question, Mr. President, your administration has been charged with the failure to reach the young people, both those who protest and march and those who don't.

Have you any specific plans for reaching the young people of this country?

THE PRESIDENT. I think you reach the young people more by talking to them as adults than talking to them as young people. I like to treat them as adults. I like to talk to them.

I was rather encouraged by the number of letters and calls I received with regard to my Vietnam speech from young people. They didn't all agree. But at least they had listened, they had paid attention. I know a way not to reach them, and that is to try to pick number one as far as the football teams are concerned.

#### News Conference, Dec. 8, 1969

Above all, let us inspire young Americans with a sense of excitement, a sense of destiny, a sense of involvement in meeting the challenges we face in this great period of our history. Only then are they going to have any sense of satisfaction in their lives.

#### State of the Union Message

Jan. 22, 1970

Q. Mr. President, have you been surprised by the intensity of the protest against your decision to send troops into Cambodia, and will the protests affect your policy in any way?

THE PRESIDENT. No, I have not been surprised by the intensity of the protests. I realize that those who are protesting believe that this decision will expand the war, increase American casualties, and increase American involvement. Those who protest want peace. They want to reduce American casualties and they want our boys brought home.

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## President Nixon

### VI. Student Dissent and National Unity

I made the decision, however, for the very reasons that there are no other. As far as affecting my decision I received their protests I am concerned about. I am concerned because I know how deeply they feel. But I know that what I have done will accomplish the goals that they want. It will shorten this war. It will reduce American casualties. It will allow us to go forward with our withdrawal program. The 150,000 Americans that I announced for withdrawal in the next year will come home on schedule. It will in my opinion serve the cause of a just peace in Vietnam.

Q. Do you believe that you can open up meaningful communications with this college-age generation, and how?

THE PRESIDENT. I would like to try as best I can to do that. It is not easy. Sometimes they, as you know, talk so loudly that it is difficult to be heard, as we have learned during the campaigns, and also during the appearances many of the Cabinet officers have made on university campuses. However, on an individual basis, I believe that it is possible to do what I have been doing, to bring representatives of the college and university communities to my office, to talk with them, to have a dialogue. I am very glad that Chancellor Hearsh, the Chancellor of Vanderbilt, has agreed to take 2 months off from his very important responsibilities in that position to work with us in the administration to see if we cannot develop better links of communication both to school administrators, but also to school students.

Q. Mr. President, what do you think the students are trying to say in this demonstration?

THE PRESIDENT. They are trying to say that they want peace. They are trying to say that they want to stop the war. They are trying to say that they want to end the draft. They are trying to say that we ought to get out of Vietnam. I agree with everything that they are saying, as far as possible.

I believe, however, that the decisions that I have made, and particularly this last terribly difficult decision of going into the Cambodian sanctuaries which were completely occupied by the enemy—I believe that that decision will serve that purpose, because you can be sure that everything that I stand for is what they want. I would add this: I think I understand what they want.

Q. Mr. President, some Americans believe this country is heading for revolution, and others believe that crime and dissent and violent demonstrations are leading us to an era of repression. I wonder if you would give us your view of the state of the American society and where it is heading.

THE PRESIDENT. That would require rather an extended answer. Briefly, this country is not headed for revolution. The very fact that we do have the safety valves of the right to dissent, the very fact that the President of the United States asked the District Commissioners to waive their rule for 30 days' notice for a demonstration, and also asked that that demonstration occur not just around the Washington Monument but on the Ellipse where I could hear it—and you can hear it pretty well from there, I can assure you—that fact is an indication that when you have that kind of safety valve you are not going to have revolution which comes from repression.

The second point, with regard to repression: That is nonsense, in my opinion. I do not see that the critics of my policies, our policies, are repressed. I note from reading the press and from listening to television that criticism is very vigorous and sometimes quite personal. It has every right to be. I have no complaints about it.

Q. Mr. President, do you believe that the use of the word "bunker" to categorize some of those who are engaged in dissent—and I know you meant it to apply to those who are destructive, but it has been used in a broader context—do you believe that is in keeping with your suggestion that the rhetoric should be kept cool?

THE PRESIDENT. I would certainly regret that my use of the word "bunker" was interpreted to apply to those who dissent. All the members of this press corps know that I have for years defended the right of dissent. I have always opposed the use of violence. On university campuses the rule of reason is supposed to prevail over the rule of force. And when students on university campuses burn buildings, when they engage in violence, when they break up furniture, when they terrorize their fellow students and terrorize the faculty, then I think "bunkers" is perhaps too kind a word to apply to that kind of person. Those are the kind I was referring to.

Q. Veterans have been written about the heinousness of the Vietnam. You, yourself, have said that you were not going to get trapped into an individual's point of view. How is it that you are not doing so? And if you have not, could you explain to us why it is that much harder that you, who are a veteran, should not be any of the ones in the administration, who are in the line?

AGREED BY MR. HICKEL. Waived until yesterday to tell the educators that the administration was listening—was modifying its discourse with the dissenters.

THE PRESIDENT. Well, just let us understand what I told the educators. The educators came in to discuss their problems, and since they are all presidents I felt a community of interest with them.

I indicated to them that I didn't want to make their job any harder for them and I would appreciate it if they wouldn't make my job any harder for me in their own activities.

They raised questions about the Vice President, and about other people in the administration, about the rhetoric, and I know, of course, questions have been raised about my rhetoric.

Let me say that in terms, however, of the Vice President, in terms of what I told the educators, I did not indicate to them that I was going to muzzle the Vice President, that I was going to censor him.

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## VI. Student Dissent and National Unity

I believe that the Vice President, the Secretary of the Interior, the Secretary of H&W, everybody in this administration, should have the right, after considering all the factors, to speak out and express his views. This is an open administration. It will continue to be.

I also think that people should have the right to speak out as they do in the House, in the Senate, in the media, and in the universities. The only difference is that, of all these people—and I refer particularly to some of my lively critics in the House and Senate—they have the luxury of criticism.

I was once a Senator and a House Member; I thought back to this when I called Barry Goldwater today and wished him well on his 63rd birthday, to some of the rather rugged criticisms that I directed in his direction.

They have the luxury of criticism because they can criticize and if it doesn't work out then they can shoot over it, or if it does work out, the criticism will be forgotten.

I don't have what Barry Goldwater, as Commander in Chief, I, alone, am responsible for the lives of 425,000 or 430,000 Americans in Vietnam. That is what I have been thinking about. And the decision that I made on Cambodia will save those lives. It will bring the peace that we all want, in my opinion. I could be wrong, but if I am wrong, I am responsible and modestly so.

News Conference, May 8, 1970

Q. Mr. President, will you see any of the demonstrators tomorrow in the White House? Will you talk with them?

A. The President, if arrangements are made by my staff so that they can come in to see me, I will be glad to. I talk to great numbers of people. I will be here all day long. As a matter of fact, I will be here tonight and tomorrow as well. But sometimes it is quite difficult to arrange which groups should come in. I know members of my staff will go out to see them. I have asked all the younger members of my staff to talk to the demonstrators and try to get their views, as we did on November 15 and October 15. I will be glad to see them if some of them are available.

PHAROS CONTRAST, Associated Press: Thank you, Mr. President.

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C.

OPPOSITION OF REPUBLICAN NATIONAL COMMITTEE  
TO PETITION FOR RECONSIDERATION

Counsel:

W. Theodore Pierson,  
Pierson, Ball & Dowd  
1000 Ring Building  
Washington, D. C. 20036

August 25, 1970

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In re Petition of )  
 )  
REPUBLICAN NATIONAL COMMITTEE )  
for Relief Against )  
 )  
COLUMBIA BROADCASTING SYSTEMS, INC. )  
 )  
TO: The Commission )

OPPOSITION OF REPUBLICAN NATIONAL COMMITTEE TO  
PETITION FOR RECONSIDERATION

The Republican National Committee (RNC), by its attorneys, hereby opposes the Petition for Reconsideration filed by the Democratic National Committee (DNC) on August 20, 1970, to that portion of the Commission's Memorandum Opinion and Order released August 18, 1970, (FCC 70-881), requiring the CBS Television Network (CBS) to afford time to the RNC or another partisan Republican spokesman to respond to a July 7, 1970, television presentation by DNC. In support of its opposition, RNC states as follows:

DISCUSSION

The principal thrust of the DNC Petition is that the Commission's Memorandum Opinion and Order requiring CBS to afford time to RNC or another partisan Republican spokesman to respond to the DNC broadcast of July 7, 1970, (1) represents a departure from the Fairness Doctrine principles, (2) proceeds from an imprecise understanding of the nature and intent of the July 7, 1970, broadcast, (3) prejudices CBS' concept of affording the "Loyal Opposition" time for the presentation of its views on controversial issues of public importance, and (4) effectively eliminates meaningful responses to Presidential appearances.

On the whole, these allegations constitute a rehash of contentions

previously fully considered and rejected by the Commission in its Opinion, or a distortion of the conclusions reached by the Commission. DNC has offered no new relevant facts having a bearing upon the Commission's Opinion nor has it pointed to any relevant law which has been ignored or misconstrued by the Commission. Rather, its sole basis for requesting reconsideration of the Commission's Opinion and Order is that it disagrees with it, which manifestly does not constitute grounds for reversal.<sup>1/</sup>

DNC in its instant Petition has indirectly reargued the same contention presented to the Commission in its Petition of May 19, 1970, and rejected by the Commission on August 12, 1970,<sup>2/</sup> namely, that there is a right of access to broadcast facilities by persons over and beyond the Fairness Doctrine right of the public to be informed. Repeatedly in its Petition DNC betrays the belief that the Fairness Doctrine is a person-or-party-oriented policy much after the fashion of the equal time provisions of Section 315. It constantly asserts that, when the President speaks, the "Loyal Opposition" (DNC) must be given a chance to speak (See Pet. pp. 4, 5, 6, and 17) regardless of the issues raised by the President and without regard to the issues, new or old, treated by the DNC appearance.

Further illumination of DNC's faulty understanding of the Fairness Doctrine is found in its Petition when it catalogs a long list of subjects with which the President dealt in his appearances, and when, without any consideration of balance achieved by the network's presentations of other views in similar or dissimilar formats or modes, it asserts that this vests a personal right in DNC to respond. DNC's erroneous conception is further emphasized by its constant juxtaposition of the 24 minutes it received against the television appearances by the President during his first eighteen months in office which would only be pertinent if the equal time provisions of Section 315 were applicable.

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<sup>1/</sup> Indeed, there is a serious question whether the DNC Petition for Reconsideration meets the basic requirements of Section 1.106 of the Commission's rules covering the filing of petitions for reconsideration by persons who have not previously been a party to the proceeding or who attempt to bring in new facts which were available at the time of the original proceeding.

<sup>2/</sup> In re Democratic National Committee, FCC 70-861, rel. Aug. 12, 1970.

As stated by the Commission in its Opinion<sup>3/</sup> rejecting DNC's similar arguments made in its May 19, 1970, Petition which was again reiterated in its decision in this proceeding, the DNC claim of a right to access over and beyond the Fairness Doctrine right of the public to be informed runs counter to the statute and decisions by the Commission and the courts. A wide degree of discretion is vested in the licensee in the manner and mode of his achieving balance in deciding who shall respond. Thus, a pure personal and individual right of access is completely foreign to the concepts of the Fairness Doctrine.

An equally fundamental defect permeating the DNC Petition is its apparent failure to recognize the Commission's well-supported factual conclusion that the DNC broadcast of July 7, 1970, was partisan rather than issue-oriented and that it was this factor which brought the July 7 broadcast within the "political spokesman arena" of the Fairness Doctrine. In reaching this conclusion, the Commission had the full script of the O'Brien broadcast before it and could not have reached any other rational conclusion than that the O'Brien broadcast was "party" rather than issue-oriented as CBS may have originally intended.<sup>4/</sup> In this regard, however, whatever CBS or even DNC may have intended is irrelevant. The content of the broadcast speaks for itself and if a new issue were raised, even unintentionally, the Fairness Doctrine would come into play. DNC's misconstruction of the Commission's Opinion is evident in its erroneous assertion that the Commission cited no issue which was raised for the first time in the "Loyal Opposition" broadcast of July 7. (Pet. p. 11). The Commission explicitly held that the July 7 broadcast fell in the "political spokesman arena" since it was "person or party" oriented rather than issue-oriented and that, as such, it raised a new issue creating new and different fairness obligations. (Op. n. 25, Par. 56).

DNC's elaborate attempt to demonstrate that imbalance exists in discussion of the issues is completely irrelevant. Thus, DNC supports its plea for right of access to television in part upon the fact that the President attracts a much

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<sup>3/</sup> Id. at 8-9.

<sup>4/</sup> As the Commission noted in its Opinion, n. 25, the DNC broadcast obviously did not come off as CBS intended.

larger audience than Mr. O'Brien did on July 7 (according to Nielsen ratings), and the results he achieves demonstrate that the President is more persuasive. It has never been the function of either the broadcaster or the Commission to make up for the relative ineffectiveness or unattractiveness of partisan spokesmen on Fairness Doctrine issues.<sup>5/</sup> Indeed, in this very decision, the Commission denies that it is addressing itself "to the matter of equalized impact -- of the effectiveness of various spokesmen or their presentation." (Op. , n. 23, p. 19). To state DNC's argument another way: The Fairness Doctrine requires a licensee to allot time in inverse proportion to a spokesman's attractiveness and effectiveness, that is, the most ineffective and unattractive would get the most time. Absurd!

Conceding the partisan nature of the O'Brien broadcast, DNC now seeks to justify the broadcast by attributing a partisan orientation to the President's remarks. In support of its allegation that, "The President has repeatedly taken to prime time television to make blatantly partisan attacks . . . " (Pet. p. 8), DNC has exhaustively culled the records of the President's remarks during his first eighteen months in office and has come up with only three short and transient remarks made by the President during press conferences which they construe to be blatantly partisan in nature. The first of these Presidential remarks criticized the technique of "jawboning" used by the previous administration to control price and wage increases as ineffective. (News Conference, Sept. 26, 1969). The second statement was that the Congressional record in terms of appropriations bills was one of the worst in history. (News Conference, Dec. 8, 1969). Since Congress is made up of both Republicans and Democrats, it is ambiguous at best whether this was a partisan attack. The third remark noted that the casualties in Vietnam under the previous administration were the highest in the whole five-year period and that negotiations for peace under the previous administration had not accomplished much. (News Conf., June 19, 1969).<sup>6/</sup>

<sup>5/</sup> Manifestly, the Fairness Doctrine cannot provide for equal audience ratings since no one can compel the public to view TV broadcasts in which they have no interest.

<sup>6/</sup> We assume that DNC is "putting us on" with their allegation (Pet. p. 9) that a Presidential statement made during a news conference (June 19, 1969) that he "endorsed" all Republican nominees for public office constituted a blatantly partisan attack.

Presumably DNC has exhaustively searched the records to come up with even these three widely dispersed, ambiguous and transient illustrations of alleged partisan broadcast statements made by the President. Assuming, arguendo, that these three illustrations were partisan in nature, made as they were during press conferences, all three together took up no more than one minute of air time. If this is all the DNC could uncover concerning partisan attacks made by the President in the 37 live nationwide television appearances DNC asserts he made in his first eighteen months in office, it is readily apparent that such appearances could not be characterized as "'person or party' oriented rather than issue-oriented" and thus do not resemble the 24-minute blatant partisan attack Mr. O'Brien made during the DNC broadcast of July 7, 1970. It is also noteworthy that Mr. O'Brien, in the July 7 broadcast, made no attempt to reply to the President's statements in the three examples which DNC belatedly alleges were partisan in nature.

DNC's allegation that the Commission's Order represents a departure from Fairness Doctrine principles has been specifically considered and rejected by the Commission in its Memorandum Opinion and Order in this proceeding. Thus, the Commission stated (Par. 53, p. 23):

"53. Again, we believe that no extended discussion is needed in view of prior precedents such as the Letter to Nicholas Zapple, 23 FCC 2d 707 (1970). We hold, based on such precedents, that the fairness doctrine requires that some reasonable period of time be afforded by CBS to the RNC or some other appropriate Republican Party spokesman selected by CBS."

As further stated by Chairman Burch in his Separate Statement (p. 5):

"1. We have not changed, altered or in any way expanded the basic precepts of the fairness doctrine. It still relates to issues, not to people and requires a licensee to make reasonable judgments in good faith as to the presentation of viewpoints on controversial issues of public importance."

The DNC further implies (Pet. n. 1, p. 11) that the Commission's Order that CBS supply some time "to RNC or a partisan Republican spokesman" is a departure from the past practice of permitting the licensee to select the particular appropriate spokesman to be used to meet Fairness Doctrine obligations. This contention ignores the fact that the O'Brien July 7 broadcast fell within the "political spokesman arena" and, therefore, differs from the



issue-oriented type of fairness presentation in that it does grant rights to specified spokesmen for the other side. See Letter to Nicholas Zapple, supra. Moreover, it is clear that the Commission has the power "to conclude that the objective of adequate presentation of all sides may be best served by allowing those most closely affected to make the response." Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 267, 379.

DNC has made the startling contention that "the Commission has strongly suggested that CBS should censor the content of future Loyal Opposition programs." (Pet. p. 4). In support of this novel proposition, DNC quotes entirely out of context the Commission's statement (Par. 55, n. 25) that CBS "would not appear to have exercised journalistic supervision to assure fulfillment of its purpose." It is, of course, axiomatic under the Fairness Doctrine that where a licensee invites someone to present the other side of the controversial issue that he can require that person to stick to the issue at hand. Radio Broadcasting for the Christian Crusade, 11 FCC 2d 687 (1968). As the Commission here recognized, the licensee does not have to permit a responder to depart from such issue and discuss anything he desires since this could only produce chaos. The Commission's only point in this regard was that if CBS intended the O'Brien broadcast to be issue-oriented, it should have exercised supervision to make sure that this was done. In not exercising such supervision, CBS permitted the broadcast to enter into the "political spokesman arena" which placed new and different obligations upon CBS than might have been the case if the broadcast had remained issue-oriented as CBS has stated it intended. Furthermore, the Commission's Opinion placed no prohibition or restriction upon CBS' journalistic right to permit the broadcast of purely partisan political spokesman fairness principles. Fairness Doctrine obligations do not constitute censorship. Red Lion Broadcasting Co., Inc. v. FCC, supra.

We will treat DNC's two final allegations together since both involve a distortion of or misconstruction of the scope of the same Commission conclusions. DNC alleges (1) that the Commission's Order effectively eliminates meaningful responses to Presidential appearances and (2) that it prejudices

CBS' concept of affording the "Loyal Opposition" time for the presentation of its views on controversial issues of public importance. There is nothing in the Commission's Opinion and Order to support either of these contentions. The Commission explicitly stated that, "There is no question but that the Fairness Doctrine is applicable to Presidential addresses on controversial issues of public importance." (Par. 31, p. 16). Its concluding paragraph went on to state:

"58. Finally, our holding is limited to the facts of this case, and specifically to this one DNC broadcast. Thus, we do not accept the RNC argument that the national committees '... are inappropriate spokesmen to respond to policy issues raised by Presidential appearances' (RNC Reply, p. 6). The short answer is that this is an area where the licensee has very great discretion. Perhaps it would be sounder or better policy for CBS always to select spokesmen in each instance. But that is not a matter for this agency. Our holding is thus that whatever the appropriateness of the DNC and its Chairman as a spokesman, the practical result here was one coming within the principles of our recent ruling, Letter to Nicholas Zapple -- that CBS' arguments, however superficially sound in theory, are defective when viewed against 'the practicalities.'" (Footnotes deleted).

Thus, the Commission placed no restriction on the choice of a spokesman, including DNC, under appropriate circumstances, or the format. Rather, its decision was limited to a holding that where a party national committee is permitted to make a person-or-party-oriented rather than an issue-oriented broadcast that the "political spokesman" fairness precedents are activated and require time to be given to political spokesmen of the other side.

\* \* \*

Finally, we turn to DNC's standing to seek reconsideration. Section 1.106(b) of the Commission's rules confers standing on "... any party to the proceeding or any other person aggrieved or whose interests are adversely affected by any action taken by the Commission. . . ." The Supreme Court has recently interpreted similar language as requiring a twofold test: (1) that the party claiming standing have an injury in fact, and (2) that such a party



must be within that class of persons which the provision was designed to protect. Association of Data Processing Service Organizations, Inc. v. Camp, 397 U. S. 150. In attempting to show how it was aggrieved, DNC urges that unless the Commission's Order is reversed, its presentation "will be vitiated by a rebuttal from RNC", CBS and other networks will be inhibited from future telecasts featuring DNC and, finally, any of DNC's future broadcasts will be censored. These allegations, like the rest of DNC's Petition, are based on a total miscomprehension of the nature and scope of the Commission's Opinion.

As demonstrated herein, the Commission has not required DNC to do or refrain from doing anything. All that the Commission has done is rule that DNC's July 7 broadcast raised a new issue to which the Fairness Doctrine is applicable and CBS must accordingly afford RNC time to respond. We have shown above (p. 6) the absurdity of DNC's claim that the Commission has ordered it to be censored and we have demonstrated that the Commission has not prevented CBS from carrying future broadcasts featuring DNC (p. 7). Since these allegations are based on a patent misreading of the Commission's Opinion, the injury foreseen by DNC could not result and the essential basis for standing is absent. The remaining ground alleged, that a rebuttal by RNC will aggrieve DNC, is equally spurious. It would be a novel, unwarranted and totally unworkable extension of the basis for standing if any person representing one side of an issue could oppose any presentation of opposing views. DNC's argument, as previously discussed (p. 2) is based on its claim of a right of access over and beyond the Fairness Doctrine right of the public to be informed and runs counter to the statute and Commission and court decisions. Since DNC's claimed "imbalance" is thus based upon a totally erroneous premise and has no legal significance, it cannot serve as the "injury in fact" required to confer standing. With no showing that DNC has been injured in fact, it is unnecessary to reach the second criteria, whether DNC is a person protected by the provision.

CONCLUSION

On the basis of the foregoing premises and all of the facts of record, it is respectfully submitted that the Petition for Reconsideration filed by the Democratic National Committee in the above-entitled proceeding should be denied.

Respectfully submitted,

W. Theodore Pierson  
PIERSON, BALL & DOWD  
1000 Ring Building  
Washington, D. C. 20036  
Attorneys for  
Republican National Committee

August 25, 1970

CERTIFICATE OF SERVICE.

I hereby certify that I have, this 25th day of August, 1970, caused copies of the foregoing Opposition of Republican National Committee to Petition for Reconsideration to be delivered by hand to:

David H. Lloyd, Esq.  
Irvin B. Nathan, Esq.  
1229 19th Street, N. W.  
Washington, D. C. 20036

Attorneys for the Democratic National Committee

and to be deposited in the United States mail, postage prepaid, addressed to:

Robert V. Evans, Esq.  
Vice President and General Counsel  
Columbia Broadcasting System, Inc.  
51 West 52nd Street  
New York, New York 10019

---

Vernon C. Kohlhaas

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In re Petition of  
REPUBLICAN NATIONAL COMMITTEE  
For Relief Against  
COLUMBIA BROADCASTING SYSTEMS, INC.

TO: The Commission

PETITION FOR FURTHER RELIEF

The Republican National Committee (RNC), by its attorneys, hereby requests the Commission to direct Columbia Broadcasting Systems, Inc. (CBS) to comply with the Commission's Order of August 14, 1970 in the above-entitled proceeding by providing an opportunity during prime time on or before October 10, 1970 for RNC to respond on the CBS radio and television networks to the July 7, 1970 broadcast by Lawrence F. O'Brien and to further require CBS to give RNC at least 16 days advance notice of the exact date and time of such broadcast. In support whereof RNC states as follows:

The Commission's Memorandum Opinion and Order of August 14, 1970 directed CBS "to extend some time to RNC or a partisan Republican spokesman to answer matters raised in the DNC broadcast."<sup>1/</sup> The Commission, however,

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<sup>1/</sup> The attached correspondence recognizes that RNC is the appropriate Republican spokesman.

did not specify the exact amount of time or the date when the answering broadcast would be aired but left these matters "to the good faith, reasonable judgment of CBS."

On August 17, 1970, after being apprised of the Commission's ruling, the Chairman of RNC, the Honorable Rogers B. Morton, sent a telegram to CBS seeking to set up the RNC broadcast at the earliest possible time (Attachment 1). Dr. Stanton's response (Attachment 2) states that CBS will not provide RNC with time until the Commission's decision is final and that CBS will seek reconsideration of the Commission's ruling and court review if the Commission should decline to reverse itself. Although Dr. Stanton stated that he trusts that "the Commission and, if necessary, the courts will act promptly to secure a final decision on this vital matter" CBS has not yet filed its Petition for Reconsideration. By standing on its procedural rights, CBS could, of course, wait until 30 days after the Commission decision, September 17, 1970, before filing its Petition for Reconsideration and, even assuming immediate denial of CBS' Petition for Reconsideration, CBS will then have a further 60 days from such denial in which to file a Petition for Review in the Court of Appeals. It is thus apparent that by merely utilizing statutory filing periods CBS could delay RNC's broadcast until after November 16 when the elections will be over.

CBS may, of course, proceed more expeditiously. Nevertheless, since the present wording of the Commission's opinion imposes no explicit time limits on CBS' performance of its Fairness obligations, CBS may seek administrative and judicial review at its own desired pace without even seeking

a stay of the Commission's Order. We believe that this case is too important to run the risk of its being mooted through dilatory tactics or the delays inherent in any litigation. By designating a specific date within which RNC's reply must be broadcast the Commission can assure itself that any review will be sought with utmost expedition and that its Order will be observed unless a stay thereof is obtained.

That delay will negate the Commission's Order is obvious. The Fairness Doctrine, pursuant to which RNC must be provided time, does not specify the time within which a response must be made, but rather relies on a test of reasonableness which takes into account the circumstances of the individual case.<sup>2/</sup> Here, the text of the O'Brien broadcast and the fund solicitations following it make it quite evident that the purpose of this program was to create support for Democratic candidates running in the November elections. Mr. O'Brien's broadcast emphasized the role of the "Democratic Congress" and several of the following fund solicitations explicitly asked assistance in "reelecting Democratic majorities in Congress this year."<sup>3/</sup>

Recognizing the political thrust of the O'Brien broadcast, the Commission found that it fell into the political arena and expressly applied a "quasi-equal opportunities" approach<sup>4/</sup> in ordering CBS to provide comparable time

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<sup>2/</sup> Recognizing this, the Commission was not previously requested to specify date for RNC's reply since such matters are usually negotiated by the

<sup>3/</sup> Copies of the texts of the fund solicitations are attached hereto as Attachment 3.

<sup>4/</sup> Section 315 of the Communications Act of 1934, as amended.

for a response. It is obvious, and the Commission has so held in numerous other cases involving political broadcasts, that equal opportunities must be afforded to any party entitled thereto prior to the holding of elections, not after.<sup>5/</sup> The same policy considerations are applicable here even though specific candidates are not involved. If RNC is forced to wait to broadcast its reply to the DNC July 7 program until after the elections now scheduled for early November have taken place, the relief ordered for RNC will be vitiated and the public's right to hear a meaningful response will be nullified. Dr. Stanton's letter to RNC recognizes that the impending elections make time of the essence (see Attachment 2). Unfortunately, it is abundantly clear that CBS' decision to exhaust all avenues of review will almost certainly preclude the timely presentation of RNC's response to O'Brien's broadcast unless the Commission modifies its Order as requested herein.

RNC has suggested that CBS be directed to provide time for response no later than October 10, 1970. As noted in the attached letters this date was chosen to avoid any implication of unfairness resulting from a broadcast at the height of the election campaign. RNC has also requested that it be given the same amount of time to prepare its presentation as was afforded Mr. O'Brien. Dr. Stanton's telegram offering DNC time was sent on June 22, 1970 to Mr. O'Brien who then had until July 7 to prepare his broadcast.<sup>6/</sup> In order to

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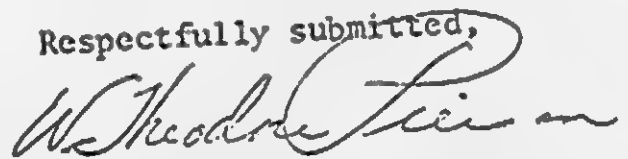
<sup>5/</sup> Personal Attacks; Political Editorials, 8 FCC2d 721, 727 (1967); Capitol Broadcasting Co., Inc., 8 FCC2d 975, 978 (1967); Golden West Broadcasters, 8 FCC2d 987, 989 (1967); Springfield Broadcasting Corp., 10 FCC2d 328, 329 (1967).

<sup>6/</sup> This was possibly not the first contact between CBS and DNC on this subject and if Mr. O'Brien was aware of the upcoming formal offer of broadcast time RNC should be given an additional period to prepare its response. CBS can doubtless provide additional information on this point in its response here.

have an equivalent amount of time to prepare its broadcast, then, RNC must be notified by CBS at least 16 days in advance of the broadcast date.

WHEREFORE, the premises considered, the Commission is respectfully requested to direct CBS to provide RNC with broadcast time on or before October 10, 1970 and to give RNC at least 16 days advance notice of the exact date on which CBS will provide such broadcast time.

Respectfully submitted,



W. Theodore Pierson  
Pierson, Ball & Dowd  
1000 Ring Building  
Washington, D. C. 20036  
Attorneys for  
Republican National Committee

August 28, 1970



CERTIFICATE OF SERVICE

I hereby certify that I have, this 28th day of August, 1970, caused copies of the foregoing Petition for Further Relief to be delivered by hand to:

David H. Lloyd, Esq.  
Irvin B. Nathan, Esq.  
1229 19th Street, N. W.  
Washington, D. C. 20036  
Attorneys for the Democratic National Committee

J. Roger Wollenberg, Esq.  
Wilmer, Cutler & Pickering  
900 17th Street, N. W.  
Washington, D. C. 20006  
Attorneys for the Columbia Broadcasting Systems, Inc.

and to be deposited in the United States mail, postage prepaid, addressed to:

Robert V. Evans, Esq.  
Vice President & General Counsel  
Columbia Broadcasting Systems, Inc.  
51 West 52nd Street  
New York, New York 10019

  
Vernon C. Kohlhaas

CALL CHARGE  
RECEIPTS TO NEW REPUBLICAN NATIONAL COMMITTEE  
AUGUST 17, 1970

DR. FRANK STANTON  
PRESIDENT  
CBS  
524 WEST 57th STREET  
NEW YORK, NEW YORK 10019

DEAR DR. STANTON:

NOW THAT THE FCC HAS RULED FAVORABLY ON OUR PETITION TO  
ANSWER THE DEMOCRAT NATIONAL COMMITTEE'S ATTACK ON PRESIDENT  
NIXON AHEAD OVER YOUR NETWORK, I KNOW YOU WILL ACT PROMPTLY  
AND IN GOOD FAITH TO AFFORD US A FAIR OPPORTUNITY TO BALANCE  
THE DNC'S PRESENTATION. THE PURPOSE OF THIS TELEGRAM IS TO  
SPELL OUT WHAT WE CONSIDER TO BE A FAIR OPPORTUNITY.

(MORE)

WESTERN UNION  
SENDING BLANK

CALL CHARGE  
RECEIPTS TO NEW REPUBLICAN NATIONAL COMMITTEE

BASICALLY WE WISH THE SAME OPPORTUNITY YOU AFFORDED THE DNC -  
NO MORE, NO LESS - 25 MINUTES AT 10:00 PM ON A WEEKDAY.

WE WISH THE SAME PERIOD TO PREPARE OUR PRESENTATION THAT YOU  
AFFORDED THE DNC. WE RECOGNIZE THIS COULD WORK A SIGNIFICANT  
ECONOMIC HARDSHIP ON YOUR NETWORK BY PLACING OUR SHOW IN THE  
MIDST OF THE INTRODUCTORY WEEK OF THE NEW TV SEASON. THERE-  
FORE WE ARE PREPARED TO DELAY OUR PRESENTATION UNTIL THE LAST  
WEEK IN SEPTEMBER OR THE FIRST WEEK IN OCTOBER. WE WOULD NOT,  
HOWEVER, WISH TO DELAY OUR PRESENTATION ANY FURTHER LEST WE  
BE ACCUSED OF UNFAIRLY INFLUENCING THE NOVEMBER ELECTIONS.

WE WILL OFFER YOU THE OPPORTUNITY TO SEE OUR PRESENTATION  
WELL BEFORE IT'S AIRING. OF COURSE, YOU RETAIN THE  
UNINHIBITED RIGHT OF EDITORIAL COMMENT BEFORE AND AFTER OUR  
PRESENTATION.  
(MORE)

WESTERN UNION  
SENDING BLANK

CALL CHARGE  
RECEIPTS TO NEW REPUBLICAN NATIONAL COMMITTEE

WE ASK THAT YOU TAKE THE PRECAUTIONARY STEP OF PREVIEWING  
OUR PRESENTATION FOR YOUR AFFILIATES REVIEW BOARD.  
ADDITIONALLY WE WOULD APPRECIATE A LIST OF YOUR AFFILIATES  
WHICH CARRIED THE ORIGINAL DNC PRESENTATION AND THE DNC  
FUND RAISING COMMERCIAL.

FINALLY, WE WOULD APPRECIATE A RAPID REACTION TO OUR POSITION.  
WE BELIEVE IT TO BE EMINENTLY FAIR TO ALL CONCERNED.

SINCERELY,

ROGERS C. B. MORTON  
CHAIRMAN  
REPUBLICAN NATIONAL COMMITTEE

CBS

Columbia Broadcasting System, Inc.  
51 West 52 Street  
New York, New York 10019  
(212) 765 4321

Attachment 2

Frank Stanton, President

Dear Chairman Morton:

This is in response to your telegram of August 17 in which you seek assurance that we will comply with the August 14 FCC ruling by affording the Republican National Committee time to balance Democratic National Committee Chairman O'Brien's July 7 appearance on the CBS Television and Radio Networks in the initial broadcast of our contemplated Loyal Opposition series.

We will of course comply with any final decision of the Commission on this matter. However, we will ask the Commission to reconsider its ruling. We do so because we believe that the Commission has failed to correctly apply its Fairness Doctrine in this situation.

As a result, the first broadcast in the Loyal Opposition series, instead of being found by the Commission to satisfy its own ruling that Presidential appearances ought to be balanced by contrasting views, was found instead not only not to achieve such balance, but to open up new obligations which require offering time to you.

We are not asking for reconsideration of this ruling because of any partisan predilection. Rather, we do so because our Loyal Opposition policy was designed to benefit both parties and, indeed, the American political system by providing one appropriate format -- but not by any means the only format -- for the redress of imbalance arising from Presidential appearances. The need for such redress was acknowledged by the Commission itself when it stated that CBS in initiating the Loyal Opposition concept "was thus responding in good faith to the need for a greater effort" with respect to redressing imbalance caused by frequent Presidential appearances, and that CBS "is to be commended for its concern."

We trust that the Commission and, if necessary, the courts will act promptly to secure a final decision on this vital matter, for we agree with you that it would be unfortunate if any reply were ultimately required to be broadcast during the height of the campaign period. In the meantime we will continue with our policy of presenting appropriate Republican spokesmen in news and public affairs broadcasts presented by CBS News.

With all good wishes.

Sincerely,

/s/ Frank Stanton

The Honorable Rogers Morton  
Chairman  
Republican National Committee  
1625 Eye Street, N. W.  
Washington, D. C. 20006

August 20, 1970

Attachment 3

AUDIO

cr: A political announcement.

on still photo of White  
se and zoom slowly into  
ss dissolve with photo of  
on.

ANNCR: (OVER) The man who lives in the White House doesn't have to worry about rising mortgage rates.

He doesn't have to borrow money at 13% interest.

He only has to worry about unemployment every four years.

But the rest of us know that mortgage rates are up, interest rates are up, unemployment is up, prices are up.

The only thing that's down is the stock market.

What's happened to our economy is what happens when a nation has a profound lack of confidence in the President.

Unfortunately, we'll have to wait until 1972 to retire Richard Nixon. But we

can keep him in check until then by

re-electing Democratic majorities in

Congress this year. And by building a strong Democratic Party.

# "COOKIE JAR"

TV -- 60 seconds  
"Cookie Jar"

AS RECORDED

OPEN ON MCU COOKIE JAR.

HANDS ENTER FRAME, REMOVE TOP  
FROM JAR, AND SPILL COINS AND  
CRUMPLED DOLLAR BILLS OF TABLE.

HANDS BEGIN TO TAPE QUARTERS AND  
DIMES TO PIECE OF PAPER.

HANDS PUT PAPER AND LOOSE DOLLARS  
IN ENVELOPE.

HANDS ADDRESS ENVELOPE.  
DEMOCRATS '70

HANDS DISAPPEAR FROM SCREEN  
AND WE HOLD ON ENVELOPE:

HANDS RE-ENTER FRAME AND PLACE  
STAMP ON ENVELOPE, THEN BANG IT  
STUCK WITH FIST.

ADD TITLE ABOVE ENVELOPE: "YOU  
DON'T HAVE TO WAIT UNTIL 1972  
TO VOTE AGAINST RICHARD NIXON."

ANNCR: You don't have to wait until  
1972 to vote against Richard Nixon.

(SFX: CLANK OF COINS HITTING TABLE,  
THEN WOBBLING UNTIL THERE IS SILENCE)

You can vote against Nixon now. Today.  
By sending dollars to the Democratic  
Party.

MAN: (MILD ANGER) Prices keep goin'  
up and up and up.

ANNCR: Your contribution will make the  
Democratic Party a stronger opposition  
to the Nixon Administration.

MAN: He's letting Agnew run wild.

ANNCR: And it can help preserve the  
Democratic majorities in the House and  
Senate to keep a tight rein on Mr. Nixon.

MAN: Said he had a secret plan to end  
the war. Hrrmph! (SFX: SCRATCH OF PEN)

ANNCR: One thing is perfectly clear.  
We can be saved from Richard Nixon  
tomorrow.

If you vote against him with your dollar  
today.

MAN: Just gotta do something.

(SFX: SLAM OF FIST) Now!

ANNCR: Paid for by the Democratic Nation  
Committee.

"Cookie Jar"

JHC  
TV -- 30 seconds  
"Cookie Jar"

AS RECORDED

OPEN ON MCU COOKIE JAR.

HANDS ENTER FRAME, REMOVE TOP  
FROM JAR, THEN SPILL COINS AND  
CRUMPLED DOLLAR BILLS ON TO TABLE.

HANDS BEGIN TO TAPE DIMES AND  
QUARTERS TO PIECE OF PAPER.

HANDS PUT PAPER AND LOOSE BILLS  
IN ENVELOPE.

DISS TO HANDS JUST FINISHING TO  
ADD ZIP CODE TO ADDRESS ON ENVELOPE.  
HANDS THEN LEAVE FRAME.

HANDS RETURN AND PUT STAMP ON.

FIST SLAMS STAMP STUCK.

ADD TITLE ABOVE ENVELOPE: "YOU  
DON'T HAVE TO WAIT UNTIL 1972  
TO VOTE AGAINST RICHARD NIXON."

ANNCR: You don't have to wait until  
1972 to vote against Richard Nixon.

(SFX: CLANK OF COINS HITTING TABLE,  
THEN WOBBLING UNTIL THERE'S SILENCE)

MAN: We can't wait. Prices keep  
goin' up. He's letting Agnew run  
wild. We just gotta help out the  
Democrats!

ANNCR: We can be saved from Richard  
Nixon tomorrow. If you vote against  
him with your dollars today.

MAN: Just gotta do something.

(SFX: SLAM OF FIST) Now!

ANNCR: Paid for by the Democratic  
National Committee.



3-11:

VIDEO

Super: A political announcement.

Open on still photo of White House and zoom slowly into a cross dissolve with a photo of Nixon.

Cut to super: "You don't have to wait until 1972 to vote against Richard Nixon."

Super: Democrats '70  
Box 3456  
Washington, D.C. 20010

Super: Paid for by the  
Democratic National  
Committee.

DENVER ALTERNATE SUPER:  
SUPPORT CAPITOL 70  
PAID FOR BY THE DEMOCRATIC NATIONAL COMMITTEE

AUDIO

Annrc: (over) The man who lives here doesn't have to worry about mortgage rates.

Or borrowing money at 13%.

And he only worries about unemployment every four years.

But the rest of us know that the economy is out of hand. That's what happens when a nation loses confidence in its President. You don't have to wait until 1972 to vote against Richard Nixon. Vote against him with your dollars today.

Send your contribution to "Democrat  
'70 Box 3456, Washington, D.C."

Paid for by the Democratic National  
Committee.



AUDIO

per: A political announcement.

Open on still photo of White House  
and zoom slowly into a cross  
resolve with a photo of Nixon.

Annex: (over) The man who lives  
here doesn't have to worry about  
mortgage rates.

Or borrowing money at 13%.

And he only worries about  
unemployment every four years.

But the rest of us know that the  
economy is out of hand. That's what  
happens when a nation loses  
confidence in its President. You  
don't have to wait until 1972 to  
vote against Richard Nixon. Vote  
against him with your dollars today.

Send your contribution to "Democrats  
'70 Box 3456, Washington, D.C."

Paid for by the Democratic National  
Committee.

Super: Democrats '70  
Box 3456  
Washington, D.C. 20010

Super: Paid for by the  
Democratic National  
Committee.

DENVER ALTERNATE SUPER:

SUPPORT CAPITOL 70  
PAID FOR BY THE DEMOCRATIC NATIONAL COMMITTEE

VIDEO

SUPER: Democrats '70  
Box 3456  
Washington, D.C. 20010

SUPER: Paid for by the Democratic  
National Committee.

(ALTERNATE FOR DENVER)  
(VIDEO ONLY)

SUPER:  
SUPPORT CAPITOL 70  
PAID FOR BY THE DEMOCRATIC NATIONAL  
COMMITTEE

AUDIO

Vote against Richard Nixon with your  
dollars today.

Send your contribution to "Democrats  
'70, Box 3456, Washington, D.C."

~~You don't have to wait until 1972~~

~~to vote against Richard Nixon.~~

Paid for by the Democratic National  
Committee.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Petition of )  
 )  
REPUBLICAN NATIONAL COMMITTEE )  
for Relief Against )  
 )  
COLUMBIA BROADCASTING SYSTEM, INC.)

To: The Commission

COLUMBIA BROADCASTING SYSTEM, INC.  
PETITION FOR RECONSIDERATION

Columbia Broadcasting System, Inc. (CBS) hereby petitions the Commission for reconsideration of that portion of its Memorandum Opinion and Order released August 18, 1970 (FCC 70-881) that declares that CBS has a duty to afford "some reasonable period of time" to the Republican National Committee (RNC) "or some other appropriate Republican Party spokesman" to respond to a July 7, 1970 broadcast on the CBS network entitled "Loyal Opposition" - "The Democrats Respond: Part One."\*/

The July 7 broadcast was presented by CBS to provide an opportunity for direct response to the extensive use of broadcast media to present the views on national issues of President Nixon, the leading spokesman for the Republican

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\*/ The ruling that is the subject of this petition for reconsideration is contained in Part E of the Commission's August 18 Memorandum Opinion and Order, ¶¶ 52-59.

Administration. While the Commission commended CBS "for its concern" in this regard and reaffirmed the general principles of licensee discretion under the fairness doctrine, it nevertheless found that the July 7 broadcast gave rise to a new reply-to-reply right by a Republican spokesman.

The precise basis for the Commission's holding is not entirely clear. The opinion appears to be based, at least in part, on a number of factors: (a) the fact that the July 7 broadcast was not limited to the issue of the Indochina War, but discussed a number of controversial issues of public importance; (b) the view that the July 7 broadcast cannot be characterized as a response to the President on the issues discussed, but is properly deemed to be a "party-oriented" program promoting the Democratic Party; and (c) the belief that CBS failed to exercise "journalistic supervision" to ensure that the July 7 broadcast would fulfill the purpose for which it was designed, with the result that the broadcast must be regarded as involving a presentation of the Democratic Party, rather than a CBS exercise of the responsibility to provide balanced, informative coverage of important issues.

We show below that, however it may be construed, this holding cannot be justified under the Commission's traditional fairness doctrine as a means of ensuring a reasonable opportunity for the discussion of conflicting views on public issues; indeed it is inconsistent with a prior Commission ruling squarely in

point. There has been no demonstration that CBS failed to act well within the wide zone of discretion of licensees in providing balanced coverage of controversial issues. To the contrary, CBS has met every obligation heretofore held to be embraced within the fairness doctrine. We show further that the new doctrine created by the Commission's decision raises serious obstacles to the achievement of fairness on a continuing basis. We earnestly request the Commission to reconsider whether this new departure is necessary, desirable or legally justifiable.

The critical issue is whether the July 7 broadcast gave rise to any specific obligations under the fairness doctrine. Against a background of the extensive use of television by the President (about twice as extensive in prime time as that of any of his predecessors) in stating the position of his Administration on public issues,<sup>\*/</sup> the Commission has ruled that a single 25-minute broadcast by a spokesman for the party out of power created an imbalance requiring that reply time be given to the President's party under the fairness doctrine. We submit that the July 7 broadcast did not give rise to any such obligations.

The Commission's August 18 order was based on a complaint containing only the barest assertions as to

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<sup>\*/</sup> See CBS response to the RNC petition in this case, p. 8, second footnote.

violation of the fairness doctrine. Indeed, the RNC did not charge that the substantive issues actually discussed by Mr. O'Brien in the July 7 broadcast -- the Indochina War, economic policy, dissent, crime, civil rights and the environment -- are ones as to which CBS has failed to satisfy its obligations under the fairness doctrine.<sup>\*/</sup> The Commission had no record on this question before it. And on a full record, no such charge could be sustained. In Exhibit 1 attached hereto, we have documented, in part, the extensive presentation by CBS during the past several months of the views of President Nixon and other Republican spokesmen on

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<sup>\*/</sup> It is well-settled that a complaint charging violation of the fairness doctrine must set forth specific information as to the basis for the claim that only one side of an issue or issues has been presented. Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed. Reg. 10415, 10416 (1964); Business Executives Move for Vietnam Peace, FCC 70-860, p. 2 (released August 12, 1970). The RNC did not make this threshold proffer with respect to any of the substantive issues discussed in the July 7 broadcast.

We discuss this matter in view of the Commission's emphasis on the fact that the July 7 broadcast was not limited to comment on the issue of the Indochina War, but covered a number of additional issues, and in view of its characterization of the RNC complaint as charging that the broadcast "covered issues upon which the President had not expressed any viewpoint." Memorandum Opinion and Order, ¶ 52.

all the issues discussed in the July 7 broadcast.<sup>\*/</sup> This CBS News Exhibit consists of quotations from and summaries of remarks by the President in broadcast speeches and press conferences, remarks by other Republican spokesmen in appearances on the CBS news interview series, "Face the Nation," and remarks by the President and other Administration spokesmen presented on CBS news documentaries and specials and on "The CBS Evening News with Walter Cronkite."<sup>\*\*/</sup> As Exhibit 1 illustrates, on July 7 Mr. O'Brien was not speaking in a vacuum; he discussed issues as to which the Administration's position has clearly been expressed on CBS broadcasts to the American people.

The RNC petition went beyond the issues explicitly discussed by Mr. O'Brien, however. It alleged that the July 7 broadcast presented the Democrats' side of the issue of "which party should govern," the other side of which had

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<sup>\*/</sup> Exhibit 1 summarizes remarks by the President and other Administration spokesmen on all the major issues discussed by Mr. O'Brien except the Indochina War. As to that issue, the Commission itself, in Part C of its August 18 Memorandum Opinion and Order, has recognized that CBS and the other networks have extensively presented the Administration's position. CBS documented its own efforts in an Exhibit to its July 22, 1970 response to the Democratic National Committee Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations.

<sup>\*\*/</sup> Included in the CBS News Exhibit are summaries of remarks in Presidential speeches and press conferences broadcast from November 1969 to the present; summaries of remarks by Administration spokesmen on other CBS News television broadcasts such as "Face the Nation," documentaries and specials from January 1, 1970 to the present; and summaries of remarks broadcast on one of CBS News' hard news broadcasts, "The CBS Evening News with Walter Cronkite," for the month before the O'Brien broadcast.



not previously been presented on CBS. While not specifically adopting the RNC terminology, the Commission's opinion is apparently based on similar reasoning. The Commission concludes that CBS turned over time to the Democratic National Committee which was used by it to present partisan advocacy for the Democratic Party. In the language of Chairman Burch's concurring statement (p. 6), the July 7 broadcast was "'person or party' oriented rather than issue-oriented." This being the case, the Commission holds, it is necessary for CBS, under the "political spokesmen" doctrine of the Zapple ruling,<sup>\*/</sup> to provide a comparable opportunity to the RNC or some other spokesman for the Republican Party.

Both the RNC analysis and the Commission holding, we submit, are based on a misconception as to the content and nature of the July 7 broadcast. A review of the transcript of the broadcast<sup>\*\*/</sup> makes clear that Mr. O'Brien addressed himself to specific issues of national importance which the President had previously discussed.<sup>\*\*\*/</sup> That

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<sup>\*/</sup> Letter to Nicholas Zapple, 23 F.C.C.2d 707 (1970).

<sup>\*\*/</sup> A transcript of the broadcast was attached to the RNC petition as Appendix A.

<sup>\*\*\*/</sup> In ruling on the RNC petition, the Commission focused on the President's five prime time broadcasts on the Indochina War and assumed that the sole intent of CBS in planning the July 7 broadcast was to present views in opposition to the President's position on the war. Memorandum Opinion and Order, ¶ 55. CBS' intention

(footnote cont. next page)



Mr. O'Brien was presenting his party's views on those issues and that this was done in a vigorous fashion should not give rise to any special right of further reply.

The RNC petition failed to point to any content of the July 7 broadcast supporting the contention that it was basically party-oriented rather than issue-oriented; nor does the Commission's opinion analyze the content of the broadcast. The RNC proceeded on the apparent assumption that, no matter what was actually discussed by Mr. O'Brien, his status as party chairman transformed the broadcast from one presenting substantive issues into one that was peculiarly partisan. While the Commission explicitly rejected the RNC argument that national committees "are inappropriate spokesmen to respond to policy issues raised by Presidential appearances,"<sup>\*/</sup> its holding, as we have noted, rests upon the recent Zapple ruling, which deals with fair treatment as between opposing "political spokesmen."

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(footnote cont.)

was not so limited, and there was no reason under the fairness doctrine for the broadcast so to be limited. The presentation of the July 7 broadcast was not triggered solely by the President's broadcasts on the Indochina War, but by the total impact of all his broadcast appearances, including press conferences as well as speeches, many of them in prime time. Neither the June 22 telegram from CBS President Frank Stanton to Mr. Lawrence O'Brien nor Dr. Stanton's letter of the same date to Senator Mansfield, both of which were attached as Exhibit 2 to the RNC petition, contains any reference to the specific issue of the Indochina War in describing the purpose and scope of the July 7 broadcast.

<sup>\*/</sup>

Memorandum Opinion and Order, ¶ 58.

The Zapple ruling is inapposite here. That ruling was addressed to political campaign situations in which time is afforded to a spokesman for a candidate for the purpose of urging that candidate's election or of criticizing his opponent (or his opponent's position on campaign issues). Letter to Nicholas Zapple, 23 F.C.C.2d 707, 708-09 (1970). In such a situation, it was there held, time must be made available on a comparable basis to representatives of the candidate's opponent.

The question in the Zapple case was thus one of discrimination between spokesmen for candidates desiring to obtain broadcast time, and the ruling in effect was that where time had been sold to one side, the licensee could not refuse to sell time to the other. Here, the July 7 broadcast resulted not from a request by one party for broadcast time, but from an affirmative decision by CBS, pursuant to its own judgment as to its responsibilities as a licensee, to redress the imbalance created by prior broadcasts of the President on national issues by seeking out and broadcasting the views of a spokesman for the political opposition to the President. This was consistent with CBS' long standing policy to supplement its regular news broadcasts, documentaries, news interviews and special news broadcasts -- its primary method for the presentation of various sides of controversial issues of

public importance -- with a substantial degree of direct exposure for partisans on controversial issues. <sup>\*/</sup>

When it is thus extended, the Zapple ruling cannot be limited to the special facts of this case. Elected officials, including the President, are normally identified with a political party and they cannot speak out publicly on issues without implicitly speaking for their party and for the proposition that it is their party that should govern. It must be borne in mind that the Presidency is a several-faceted institution. The President is the head of state and head of government. As leader of all the American people, he is in one sense above party and politics, and this is reflected in the general tenor of his public remarks. Moreover, the need to obtain significant support from members of the opposition in Congress (whether or not the opposition party is in control of either House) militates against blatant partisanship on the part of the President.

But the President is also the unquestioned leader and spokesman of his party. In fact, the extensive appearances of President Nixon on CBS to discuss public issues have constituted a strong endorsement of Republican government. He

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<sup>\*/</sup> CBS' policy relating to the presentation of controversial issues is fully set forth at pages 3-10 of its response to the Democratic National Committee Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations.

has made many remarks that directly reflect his role as party leader -- extolling the virtues of the Republican Administration and commenting unfavorably on the positions or actions of the previous Democratic Administration and the current Democratic-controlled Congress.

Thus, for example, even while stating in this year's State of the Union address that he was breaking with the "tradition" of using that address "to lay the basis for the political issues which might be decisive in the fall,"<sup>\*/</sup> President Nixon made a number of remarks contrasting the performance and plans of his Administration with those of his Democratic predecessors. He placed "the primary blame" for rising prices on the Federal Government's deficit spending "in the decade of the sixties," contrasting this with his own budget practices and plans.<sup>\*\*/</sup> And he contrasted his plans to win the war against crime with his predecessor's "overblown rhetoric" on "wars":

"We have heard a great deal of overblown rhetoric during the sixties in which the word 'war' has perhaps too often been used -- the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word 'war' is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which

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<sup>\*/</sup> 6 Weekly Compilation of Presidential Documents (hereafter "WCPD") 58 (1970).

<sup>\*\*/</sup> 6 WCPD 61 (1970).

increasingly threaten our cities, our homes,  
and our lives."\*/

In the same connection, he noted that Congress (controlled by the Democrats) had failed to pass any of his thirteen recommended bills to deal with the crime problem.

In his June 17, 1970 speech on economic policy, President Nixon again emphasized the point that his Administration was seeking to reverse the pattern of deficit spending and "runaway inflation" that prevailed under his Democratic predecessors. See p. 4 of the CBS response to the RNC petition in this proceeding. He also stressed his own initiatives in introducing domestic legislation to deal with economic problems, noted Congress' inaction, and announced at several points: "It is time for the Congress to act."\*\*/

This same general theme -- contrasting Presidential responsibility with the actions of the Democratic-controlled Congress -- pervaded the President's broadcast message vetoing the HEW appropriations bill on January 26, 1970.\*\*\*/

The President's broadcast press conferences have contained remarks of a similar nature. Thus, for example, in his press conference of June 19, 1969, he stated, in response to a question about former Defense Secretary Clifford's Vietnam troop withdrawal proposal, that --

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\*/ 6 WCPD 62 (1970).

\*\*/ 6 WCPD 779 (1970).

\*\*\*/ 6 WCPD 76 (1970).

"in the year . . . in which he was Secretary of Defense, our casualties were the highest of the whole 5-year period and, as far as negotiations were concerned, all that had been accomplished . . . was that we had agreed on the shape of the table."\*/

In his September 26, 1969 press conference, the President characterized his Democratic predecessor's use of "jawboning" to avert inflationary price increases as follows:

"[T]he previous administration tried, through jawboning, as it is called, to put the blame on business for price increases; the blame on labor for wage increases . . . . It [jawboning] is hypocritical, it is dishonest, but most important, it is ineffective, because, since 1966 . . . despite all the calling of the people to the White House, telling them to hold prices down, hold wages down, prices continued to escalate."\*\*/

At his December 8, 1969 press conference, the President responded as follows to a question about criticism of the Administration by House Democratic Leader Carl Albert:

"I think he knows as all of you know, that for 6 months we have had a major crime control package before the Congress with no action. For months we have had other programs in a number of fields there without action.

This Congress has the worst record in terms of appropriations bills of any Congress in history."\*\*\*/

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\*/ 5 WCPD 879 (1969).

\*\*/ 5 WCPD 1330 (1969).

\*\*\*/ 5 WCPD 1724-25 (1969).

During "A Conversation with the President on Foreign Policy," broadcast by CBS on July 1, 1970, the President was asked to comment on a statement by George Ball, Under Secretary of State during the Johnson Administration, that "the Russians were bold enough to move into the Middle East because we were bogged down in Indochina." The President replied:

"As a matter of fact, Mr. Smith, Mr. Ball should know something about that because he was there when we got bogged down in Indochina as you recall, as Under Secretary of State. I did not hear his comments at that time indicating that that was the problem."\*/

At the President's press conference on July 30, 1970, he spoke of the need to curb Government spending:

"[I]t is necessary for the President to represent all the people and to stand up against those very well intentioned Congressmen and Senators who vote for this appropriation, or that one, appropriations and spending that would benefit some of the people but that would cost all of the people in higher taxes and higher prices.

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\*/ 6 WCPD 869 (1970). The Vice President has expressed even stronger views on the previous Administration's Vietnam policy. In a November 13, 1969 speech broadcast by CBS, Vice President Agnew had the following to say about President Johnson's representative at the Vietnam peace talks:

"A word about Mr. Harriman. For ten months he was America's chief negotiator at the Paris Peace Talks -- a period in which the United States swapped some of the greatest military concessions in the history of warfare for an enemy agreement on the shape of a bargaining table. Like Coleridge's Ancient Mariner, Mr. Harriman seems to be under some heavy compulsion to justify his failures to anyone who will listen."



\* \* \*

". . . If the Congress does not cooperate in holding down spending, it will be necessary to look hard about where we are going to find the money and that means more taxes."\*/

The indirect partisan impact of President Nixon's appearances has also been significant. His statements, like those of any President, are designed not only to inform the nation about current developments and to present the President's views on these problems; they also seek to reassure the public that the reins of government are wisely entrusted to Republican hands.

Thus, to whatever extent it might be inferred by viewers that Mr. O'Brien's statements were addressed to the issue of "which party should govern," the same inference would necessarily have to be drawn from the President's statements in his own appearances. In short, the Republican side of the issue on which the RNC petition focuses has been fully presented.

The Commission appears to suggest that the problem created by the July 7 broadcast would not have arisen if CBS had exercised "journalistic supervision" of the broadcast. Presumably, the Commission's thought is that if CBS had seen

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\*/ 6 WCPD 1002-03 (1970).

\*\*/ Memorandum Opinion and Order, ¶ 55, note 25.



fit to exercise control to ensure that the O'Brien presentation was "issue-oriented," the program would have been a "CBS program" rather than a "Democratic Party program," and the Zapple ruling would not apply. But no such "supervision" to eliminate partisan overtones is exercised over broadcast speeches of the President; and, as we have noted, those speeches often reflect the President's role as leader of his Party.<sup>\*/</sup> Just what is the nature of this supervision that is necessary if partisan spokesmen are to be presented? Just how would the standards be stated that would ensure that the spokesmen stick to "pure" issues and avoid explicit or implicit endorsement of the virtues of Democratic Party rule? And what supervision of the Republican reply to the July 7 broadcast contemplated in the Commission's order is appropriate and permissible to prevent that reply from giving rise to a further requirement of presenting a Democratic reply to that reply?

The incongruity of this suggested "journalistic supervision" is further demonstrated by the Commission's

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<sup>\*/</sup> The Commission has held that the telecast of Presidential press conferences during a Presidential campaign is not exempt from the "equal opportunities" requirement of Section 315. CBS, Inc., 40 F.C.C. 395, 3 Pike & Fischer, R.R.2d 623 (1964). A major basis of this holding was the Commission's finding that "not only the scheduling, but in significant part, the content and format of the press conference is not under the control of the network. Thus, the candidate determines what portion of the conference is to be devoted to announcements and when the conference is to be thrown open to questions." 3 Pike & Fischer, R.R.2d at 626. Such a finding applies even more clearly to Presidential reports to the people or to other speeches or statements by the President.

holding, in Part C of its August 18 Memorandum Opinion and Order, that an "uninterrupted opportunity" must be provided for a response by an appropriate spokesman for the opposition to the President on the Indochina War.<sup>\*/</sup> Significantly, no suggestion of "journalistic supervision" has been made by the Commission in that context.

If the RNC ruling is reaffirmed, it is difficult to see why it would not apply to any response to Presidential broadcasts by any political figure, regardless of the issues discussed. The Commission's opinion implies that if Mr. O'Brien had discussed only the Indochina War, no Republican right of response would have been created. But if Mr. O'Brien was functioning basically as a "party spokesman" in the July 7 broadcast, as the Commission's opinion implies, he would have been as much a partisan figure had he limited himself to the Indochina War. And would it have made any difference had the precise multi-issue presentation in the July 7 broadcast been made instead by Senator Mansfield, former Vice President Humphrey, Speaker McCormack or some other public figure identifiable as a prominent Democrat? Surely if one of these leaders had been the spokesman, the same partisan political inferences as to the desirability of government by the Democrats rather than the Republicans could have been drawn with as much validity.

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<sup>\*/</sup> Memorandum Opinion and Order, ¶ 41.

A concrete example on which the Commission has expressly ruled will illustrate our point. It has been CBS' practice in the past to allot time to members of the opposition party in Congress to respond to the President's State of the Union message. This has been done during both Democratic and Republican administrations.

A transcript of one such CBS broadcast is attached as Exhibit 2: the response by Republican Congressional leaders to President Johnson's 1968 State of the Union address. We suggest that in terms of its "partisan" nature -- the broadcast of explicitly partisan remarks and the implicit focus, while discussing specific issues, on the theme that the party out of power can better solve this nation's problems than can the President and his party -- this responsive broadcast by Republican Congressional leaders cannot be distinguished from the July 7 O'Brien broadcast.

A few excerpts from this 1968 response, as printed in the Congressional Record,<sup>\*/</sup> dramatically illustrate this point. Consider these remarks by Representative Gerald Ford, the Republican leader in the House:

"People all across this nation are deeply disturbed, concerned about what's going on, right here at home. I've listened to them -- we all have -- and every day I'm moved by the simple eloquence of their letters -- their unashamed love for America.

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<sup>\*/</sup> 114 Cong. Rec. 882 (1968).

"Doesn't the President listen to any of these people?

They've seen raging violence, bloodshed, destruction and death right on their own doorsteps -- their homes and stores ablaze and looted -- tanks and paratroopers -- not on faraway battlefields but rolling through once quiet neighborhoods and blasting snipers from roofs and office windows.

And the President could only tell us he detects 'a questioning' and 'A certain restlessness' among his countrymen.

We can speak far plainer than that!

Riots, murder and robbery -- is that just 'restlessness?'

Deepening disbelief in our nation's policies, doubts about our most sacred institutions and traditions, concern over the credibility of our government's word -- the worth of our government's dollar -- do you call that 'questioning?'

The President's only explanation was, 'When a great ship cuts through the sea, the waters are always stirred and troubled.'

Apparently the President has been standing on the stern -- looking backward at the broiling wake -- wondering which of his officers to dump overboard next!

The Ship of State is wallowing in a storm-tossed sea, drifting toward the rocks of domestic disaster, beaten by the waves of worldwide fiscal crisis that threaten shipwreck.

The Captain should return to the bridge.

We need a Captain who will seize the helm -- call up full power -- break out new charts -- hold our course steadfast and bring us through the storm.

We need a Captain who inspires his crew to heroic endeavor.

We need a Captain with courage to clear the deck -- jettison the deadweight -- a Captain who learned his seamanship beyond the Potomac and the Pedernales." (Emphasis in original.)

Representative Poff, speaking on the crime issue, stated that:

"Murder is epidemic. Rape is commonplace -- Burglary happens so often it is no longer news. Pornography, filth and dope are peddled on nearly every street corner. Crime has grown six times as fast as the population.

Despite the urgent warnings of F.B.I. Director Hoover and law enforcement officers everywhere, the Johnson Administration has failed to take effective action. The Attorney General has banned the use of modern investigative techniques. The soaring increase in crime has been called just 'a little bit' of an increase."

Representative Bush assailed the Administration's "reckless policy" of deficit spending. And Senator Tower stated that "this war could be over today if the Johnson Administration had acted with determination instead of vacillation."

Despite its party-orientation, this response of Republican Congressional leaders to President Johnson's State of the Union message was held by the Commission, in a February, 1968 ruling, not to give rise to reply rights for a Democratic spokesman. Letter from Chairman Rosel H. Hyde to Honorable Wayne L. Hays, Commission Reference No. 8330-S; C2-105. The Commission upheld CBS' action in denying further reply rights to the Democrats in a situation precisely analogous to the one in which the Commission has now declared

the Republicans entitled to further reply rights.<sup>\*/</sup>

Because the Hays ruling is squarely in point, we quote it in full:

"I have your letter of February 1, 1968 with which you enclose a copy of a telegram to you from Mr. Frank Stanton, President of the Columbia Broadcasting System, rejecting your request that Democratic leaders of Congress be afforded time equal to that given Republican leaders on January 23, 1968.

Mr. Stanton states that CBS made its facilities available for a 'Republican view of the State of the Union' following the broadcast of President Johnson's State of the Union address; that CBS believes that its judgment was consistent with the fairness doctrine in affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance; that although other groups doubtless would be able to furnish appropriate spokesmen to comment on the views expressed by the President, the views of the Republican leadership 'are clearly among the most significant . . .' and that with respect to your demand that the Democratic Party be afforded time commensurate with that given the Republicans, 'we suggest that the President, as the leader of the Democratic Party, may be supposed to have been the most authoritative spokesman of that party's views on the issues before this session of the Congress.'

In your letter of February 1 you state that the President did not mention the Republican Party in his State of the Union address, that he was required by the Constitution to deliver such a

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<sup>\*/</sup> In its original petition in this case, the RNC made the unfortunate suggestion that CBS' action in denying its request for time to respond to the July 7 O'Brien broadcast could only be explained by "a CBS bias against the Republican Party." RNC Petition, p. 8. We heard no such complaint of bias from the RNC in the Hays case two years ago, when CBS denied "reply-to-reply" rights to the Democrats in the same kind of situation.



report to the Congress, that the period CBS made available to the Republicans was devoted to a political program in which the Democratic Party and the President were repeatedly mentioned unfavorably, and that you believe this to have constituted an abuse and violation of the equal time concept.

The time afforded to the Republican leaders by CBS was not required to be made available under the "equal opportunities" provision of Section 315 of the Communications Act. The "equal opportunities" provision applies only to legally qualified candidates for the same public office.

Basically, the fairness doctrine, which here is involved, requires a licensee who has presented one viewpoint on a controversial issue of public importance to afford reasonable opportunity for the presentation of opposing views. The fact that the initial presentation has been made during on-the-spot coverage of a bona fide news event, or by a holder of public office speaking in his official capacity, does not relieve the licensee of the obligation to attempt to bring about a balanced presentation of opposing views. Paul Fitzpatrick, 6 RR 543; California State Central Committee, 20 RR 867. See also: Letter of January 17, 1968 to the Democratic State Central Committee of California, a copy of which is enclosed.

There is no single method by which the fairness obligation is to be met. As the Commission's 1949 Editorializing Report makes clear, the licensee has considerable discretion as to the techniques and formats to be employed in presenting views opposing those previously broadcast. It will in each instance be called upon to exercise its best judgment in determining the different shades of opinion to be presented and the spokesman for each point of view.

In passing on any complaint in the fairness area, the Commission's role is not to substitute its judgment for that of the broadcaster but rather to determine whether it could be said to have acted reasonably and in good faith. The question

presented is whether CBS in discharging its obligation under the fairness doctrine, can be said to have acted within the wide discretion afforded it in this area. Report on Editorializing, 13 F.C.C. 1246. Given this standard, it does not appear that CBS has acted other than reasonably and in good faith or has exceeded that area of discretion."

The Commission's ruling on the RNC petition cannot be reconciled with the Hays ruling just quoted. We submit that this earlier holding by the Commission was correct and should govern here.

If allowed to stand, the Commission's ruling on the RNC petition will defeat the salutary purpose of presenting broadcasts such as the response of opposition party leaders to the President's State of the Union address or to other broadcasts presenting his views on public issues. Under the Commission's ruling, any attempt to balance Presidential appearances through presentation of a response by those of a different political persuasion will fail. For any balance thus achieved will be immediately destroyed by the duty to present the President's views again through some other spokesman of his party. To encumber the utilization of opposition party spokesmen to respond to views on issues presented by the President, as the Commission has done here, is to defeat rather than to fulfill the purpose of the fairness doctrine.



Moreover, the Commission's ruling with respect to the July 7 broadcast is strikingly inconsistent with Section D of the Commission's Memorandum Opinion and Order, rejecting Senator Dole's complaint.<sup>\*/</sup> The Commission recognized that to grant Senator Dole's request would merely have resulted in the repeated presentation of Administration views on the war -- a result inconsistent with the fairness doctrine. A similar recognition is implicit in the Commission's Hays letter, discussed above. But the Commission's holding in the RNC case has created just such an anomalous situation: CBS would be required again to present Republican views that have been presented over its network by the President and other Republicans -- views that CBS had sought to balance, in the interest of fairness, by presenting the O'Brien July 7 broadcast.

Aside from its inconsistency with other parts of the August 18 Memorandum Opinion and Order, the ruling on the RNC petition -- requiring time for a response based upon consideration of a single broadcast in isolation -- is at odds with the basic philosophy of the fairness doctrine. The Commission's

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<sup>\*/</sup> Memorandum Opinion and Order, ¶ 48. An appeal from the Commission's decision in Parts C and D of its August 18 Order is currently pending in the Court of Appeals for the District of Columbia Circuit. Dole v. FCC, No. 24,583, notice of appeal filed August 27, 1970.

determination that the July 7 broadcast was so party-oriented as to require a special reply of the "equal opportunity" type necessarily involves the Commission in exercising and substituting its judgment in individual cases for that of the licensee, contrary to the fundamental principles of the fairness doctrine expressed by the Commission in the Hays ruling and in paragraph 22 of its August 18 Memorandum Opinion and Order.<sup>\*/</sup> If the Commission is to attach critical consequences under the fairness doctrine to a case-by-case determination whether particular broadcasts on public issues are "issue-oriented" or "party-oriented," the unfortunate result can only be increased governmental intrusion on licensee responsibility in a sensitive area.

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<sup>\*/</sup> In its August 18 Memorandum Opinion and Order (§ 22), the Commission, quoting the Fairness Primer, 29 Fed. Reg. 10416 (1964), reiterated the relevant standards:

"[T]he licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation -- as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. See par. 9, Editorializing Report. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the 'equal opportunities' requirement."

CONCLUSION

For the foregoing reasons, the Commission should reconsider Part E of its Memorandum Opinion and Order of August 18, 1970, and reject the petition of the Republican National Committee.

In view of the importance of this case to the proper administration of the fairness doctrine, we request that the matter be set for oral argument at the earliest time the convenience of the Commission permits.

Respectfully submitted,

COLUMBIA BROADCASTING SYSTEM, INC.

By /s/ Robert V. Evans  
Robert V. Evans

/s/ Ralph E. Goldberg  
Ralph E. Goldberg

/s/ Joseph DeFranco  
Joseph DeFranco  
51 West 52 Street  
New York, New York 10019

Its Attorneys

Of Counsel:

Lloyd N. Cutler  
J. Roger Wollenberg  
Daniel Marcus  
Wilmer, Cutler & Pickering  
900 - 17th Street, N.W.  
Washington, D.C. 20006

September 3, 1970

\*/  
EXHIBIT 1

A. PRESIDENTIAL APPEARANCES BROADCAST BY CBS  
FROM NOVEMBER 1969 TO THE PRESENT KEYED TO  
ISSUES DISCUSSED IN JULY 7 O'BRIEN BROADCAST

I. POLARIZATION - DISSENT

<u>Date</u>	<u>Time (min:sec)</u>	<u>Summary</u>
December 8, 1969 Press Conference	1:40	He must take stand he feels is right, but has no enmity against dissenters. Can reach young people by talking to them as adults.
May 8, 1970 Press Conference	9:45	Not surprised at intensity of dissent over Cambodian action. Feels he did right thing. Agrees with what students are saying, believes what he did will attain their goals. Closing communication gap by bringing representatives from colleges to Washington to talk. Will try to talk to demonstrators if it can be arranged. VP will answer for himself. "When action is hot, keep rhetoric cool." Explains his prior remark on "bums" as applying only to students who engage in violence.
May 28, 1970 Remarks at Billy Graham Crusade	4:04	Most American youth do not approve of violence. Youngest White House staff in history. Praises young Americans.
July 1, 1970 Conversation with President	1:32	Had to risk student dissent to protect American soldiers; feels majority of American people support him.

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\*/ This exhibit is designed to illustrate examples of remarks presenting the Administration's side of issues discussed by Mr. O'Brien on the July 7 broadcast. It does not purport to provide a complete summary of the speech, press conference, interview or documentary in question.

PRESIDENTIAL APPEARANCES (Continued)

- 2 -

<u>Date</u>	<u>Time (min:sec)</u>	<u>Summary</u>
July 30, 1970 Press Conference	3:00	Re: lack of communication with college students: to blame the Government for the problems is shortsighted -- we are ending the war, dealing with problems of environment, making the Government more responsive to the people -- still there is dissent. It is not a problem for Government but for college administrators and college faculties.
II. ECONOMIC CONDITION OF COUNTRY		
January 22, 1970 State of the Union Address	3:00	Inflation can only be blamed on the government in power in the 60's. This Administration has had a balanced budget and cut Government spending.
January 26, 1970 Radio-TV address	1:40	Vetoes HEW Bill in part because of rising cost of living.
January 30, 1970 Press Conference	5:00	Budget he will announce Monday will be major blow in stopping inflation psychology. Re: jaw-boning -- basically unfair and not effective with entire problem. Veto of HEW Bill is a signal to country that we're not going to have a run-away Congress -- therefore no run-away budget. Therefore Federal Reserve will be able to loosen monetary policy.
June 17, 1970 Radio-TV address	22:00	Current economic problems due to adjustment from a wartime to a peacetime economy. Greater unemployment than anticipated. Administration is attempting to avoid recession while ending inflation, which Administration had inherited. Discusses various means to end inflation and describes his Administration's choice: cut down sharp rise in Federal spending and restrain economy. Admonishes business and labor to use restraint in wage-price demands. Will not use wage and price controls. Outlines his economic program:

PRESIDENTIAL APPEARANCES (Continued)

- 3 -

<u>Date</u>	<u>Time (min:sec)</u>	<u>Summary</u>
June 17, 1970 Radio-TV address	22:00	Expand and strengthen unemployment insurance system. Manpower Training Act. Training and support of young people out of school in summer. Protect small investor against losses in stock market. Social security to be tied to cost of living. Emergency Home Finance Act. Aid to small businesses. Emergency assistance to railroads. Hold down Government spending.
July 30, 1970 Press Conference	4:20	Believes inflation is being cooled. Re: rising unemployment, especially for blacks: because of anti-inflationary policies, inflation has cooled, but economy has also slowed down. Change from wartime to peacetime economy has resulted in additional unemployment. A price he believes worth paying, but has urged Congress to act more swiftly on extension of unemployment insurance, etc., which he proposed to cushion the transition period.
III. CRIME		
December 8, 1969 Press Conference	:20	"For 6 months we have had a major crime control package before the Congress with no action."
January 22, 1970	3:00	Only place not ordered budget cut. Pledges "war" against crime. Hopes Congress passes laws sent to them last year. Emphasizes D.C. crime problem. 71 law enforcement budget will double the 70 budget.
July 30, 1970 Press Conference	3:00	Defends provisions of D.C. Crime Bill as necessary to protect citizens and not repressive.

PRESIDENTIAL APPEARANCES (Continued)

- 4 -

IV. EQUAL RIGHTS

<u>Date</u>	<u>Time (min:sec)</u>	<u>Summary</u>
December 8, 1969 Press Conference	:20	Will carry out what Supreme Court has laid down, even though I may disagree with a specific instance.
January 22, 1970 State of the Union Address	:34	Must expand range of opportunities for all Americans.
January 30, 1970 Press Conference	1:45	I am interested in deeds. Interested in closing performance gap. I don't think I'm going to win black people with words.
July 30, 1970 Press Conference	2:10	Believes that Attorney General Mitchell is correct in predicting that most of the schools in the South will be desegregated in the fall, depending on the cooperation of Southern districts. Will send Federal officials only if help is requested by districts. We provided more opportunities for Mexican-Americans than any Administration in history. We welcome Mexican-Americans in Government positions.

V. HUMAN RESOURCES

December 8, 1969 Press Conference	2:15	Re: White House conference on hunger -- we all want to end hunger, but someone has to pay the bill. Conference recommendations are unrealistic. Supports director of Office of Economic Opportunity in a 2-year extension to reform OEO.
January 22, 1970 State of the Union Address	:45	Recommends total reform of welfare system, plus better housing, etc.

PRESIDENTIAL APPEARANCES (Continued)

- 5 -

<u>Date</u>	<u>Time (min:sec)</u>	<u>Summary</u>
January 26, 1970 Radio-TV address	6:25	Discusses his own HEW appropriation. Reasons for veto: 1. Rising cost of living. 2. Spending for wrong purposes; for example, Impacted Aid Program. 3. Wrong time -- money would have to be spent in a hurry. Expects disagreement and respects different views, but stresses again that his veto will help stop the rise in cost of living.
VI. ENVIRONMENT		
January 22, 1970 State of the Union Address	6:55	Proposes a \$10 billion clean waters program. Must now begin to treat air and water as scarce properties. Must reverse rural exodus and flight to cities.
July 30, 1970 Press Conference	2:15	Re: air pollution on the East Coast: Congress should pass legis- lation he submitted in the environ- mental message. Also, standards for automobile emissions should be followed by auto industry.



B. APPEARANCES BY ADMINISTRATION  
SPOKESMEN ON FACE THE NATION,  
JANUARY 1, 1970 - PRESENT

I. POLARIZATION - DISSENT

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
February 1, 1970	V.P. Agnew	2:20	<p>"I don't look at Middle America as an equal segment of American society to be weighed against the opinion on the left and the opinion on the right. I look at Middle America as encompassing the broad spectrum of people who may be very liberal on one subject and very conservative on another, who do not consider themselves political activists every day, but who are only interested in the principles that the country runs by and a continuation of the American way of life."</p> <p>"You just take a look at the complexion of society in the country compared with last year and the year before that and you'll see that a great amount of peace and stability has returned to the United States. We are trying to do something about the crime situation, and I am hopeful that the Congress will act on the proposals still before it that have been there quite some time so that we can move as aggressively and as affirmatively as we can in this area. But I think that the average American would agree that there is a lot more placid atmosphere in the United States since this Administration took office."</p>

FACE THE NATION (Continued)

- 7 -

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
May 3, 1970	V.P. Agnew	:30	Critics of the war fall in 2 categories: well-motivated and constructive, and "the dissident destructive elements in our society." "The disrupters must be put down because if this country is going to progress and go forward, it must go forward in a lawful fashion. . . . And I think if the war were over, for example, they would find something else as an excuse for throwing fire-bombs into the Bank of America."
May 24, 1970	Herb Klein, Dir. of Communica- tions, Exec. Branch	5:18	<p>"You have to look also at the fact that the students you have heard the most from have been the militant few, really, and the great majority of American students are the ones who perhaps are deeply concerned, no in fact, I am certain they are."</p> <p>Re: President speaking to demonstrators in Washington at 4 a.m.: "I think the fact that he can do this, and he can go out around the country is a very significant point, and it is one which I think is symbolic to the students, that we have a President who is concerned with what they are saying, a President who is willing to listen but also one who feels that he alone must make the final decision on the major questions of policy."</p>

FACE THE NATION (Continued)

- 8 -

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
May 24, 1970	Herb Klein, Dir. of Communica- tions, Exec. Branch	5:18	Government attempting to bridge the gap to younger generation and evidence that it is working is that students are now moving to work within the system.  Announces commission to investigate Kent State tragedy.  Defense of Agnew against charge of promoting polar- ization.
June 14, 1970	Gov. Raymond Shafer (R Pa.)	:45	"Well, Mr. Nolan, of course, we are not going to lose Pennsylvania or America, and I can't disagree with you that the initial re- action of what took place in Cambodia did result in a further feeling of hope- lessness on the part of the American people. But as the facts come out, I find that the great mass of American people have supported the President and, as we see what has been accomplished as a result of his decision to do that and as a result of the gallant efforts of our men and the South Vietnamese people, that there will be a feeling of greater hope."
II. ECONOMIC CONDITION OF COUNTRY			
January 11, 1970	Sec. of Defense Melvin Laird	:15	DOD budget must reflect concern over inflation.

FACE THE NATION (Continued)

- 9 -

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
January 25, 1970	Daniel P. Moynihan Counselor to the Pres. for Domestic Affairs	1:12	Environmental quality doesn't conflict with anti-inflationary measures, rather a matter of priorities.
February 8, 1970	Sen. Charles Goodell (R N.Y.)	:39	Re: support of Nixon: "Basically on economics, fiscal policy, that we should have a balanced budget and we should cut back in areas of low priori- ty expenditures. We've differed some on what are low priority expenditures, but I have supported his economic policy."
May 24, 1970	Herb Klein	1:39	President concerned about economy but he, and the public behind him, retain confidence.
June 21, 1970	Dr. Paul McCracken Chairman of the Presi- dent's Council of Economic Advisers	11:39	A cautious statement that inflation has peaked out, but the process of stabili- zation of the economy will be slow and unemployment has not finished rising.  "The President did, of course, refer to some basic things that constitute im- portant influences deter- mining the subsequent course of the economy, as you know . . . I think the important thing to recognize is that these basic forces that are going to be making for some what more rapidly expanding economy have been in opera- tion now, it takes time for them to work; exactly when they will show up is diffi- cult to say."

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
June 21, 1970	Dr. Paul McCracken Chairman of the President's Council of Economic Advisers	11:39	Planning cautious expansionist policies into the economy, at the same time issuing the inflation alerts the President spoke of on TV.  Re assistance to companies, especially railroads in straits: "I think the Government is moving more and more in the direction of taking cognizance of the casualties or those who suffer from the inevitable adjustments, whether they are people who are unemployed, businesses that may be in trouble."
III. CRIME			
February 1, 1970	V.P. Agnew	1:00	Urges action by Congress on Administration's crime proposals.
May 3, 1970	V.P. Agnew	3:03	"Well, our program is well under way. I am not sure you are aware of this or not, but in the field of criminal justice and law enforcement the assistance to local government has tripled in the past two years."
IV. EQUAL RIGHTS			
February 1, 1970	V.P. Agnew	4:27	Defense of Administration's intention to implement Supreme Court ruling on desegregation and the Administration's stand against busing; announcement of formation of cabinet level committee headed by himself.

FACE THE NATION (Continued)

- 11 -

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
March 1, 1970	Sen. Charles Mathias, Jr. (R Md.)	4:24	<p>Support of Administration's move not to enforce busing in segregated schools in the South.</p> <p>Re Administration's doing all possible to promote integration: "Yes, I do think it is. And I think this is a curious thing that, in spite of some of the backing and filling, in spite of the Panetta incident, that probably more progress is going to be made in this field in the four years of the Nixon Administration than in any comparable period of time in the entire history of the country."</p>
March 22, 1970	Jerris Leonard, Ass't Atty General, Chief of Civil Rights Division of Justice Department	12:09	<p>Defense of Nixon's policy on desegregation of schools: "Now I think that the President has said on any number of occasions, 'Judge this administration by what it does.' We have accomplished in the field of school desegregation, we have almost doubled the number of school districts which have moved from dual to unitary systems in a short 14-month period, over those which have moved from dual to unitary in all of the time since 1954. We have doubled the number of negro children attending desegregated schools in the deep southern states in that short period of time. It has gone from 20% to 40%; it has gone from 600,000 to 1,200,000. Now, this is the record, the accomplishments that I was talking</p>

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
March 22, 1970	Jerris Leonard, Ass't Atty General, Chief of Civil Rights Division of Justice Department	12:09	about before, that it is difficult for anyone to change that record or to set out a different path. The path has been established by law, by court orders, by court decrees, by the Supreme Court."  Defense of Attorney General's procedure for enforcing court orders, failure of the Justice Department to achieve full desegregation and of the anti-busing position. Denial of conflict in Department.
V. HUMAN RESOURCES			
January 11, 1970	Sec. Laird	:42	DOD budget must be reviewed in light of domestic programs.
January 25, 1970	Daniel P. Moynihan Counselor to the Pres. for Domestic Affairs	:51	"The President right up front in his State of the Union message, he said: 'I have three priorities. One, I want family assistance, a minimum income for every American family. Two, I want the new Federalism which means revenue-sharing and three, I want equal opportunity for all Americans in jobs, in schooling and so forth.'"
February 8, 1970	Sen. Charles Goodell (R N.Y.)		Re: Federal money to cities without control of Government for human resource requirements: "Yes, I have, in part, I have advocated since I went to Congress in 1959 Federal revenue-sharing which President Nixon has advocated."

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
May 24, 1970	Herb Klein, Dir. of Communica- tions for the Exec. Branch	:39	President acting on drug abuse problem, especially in agreements with other national governments.
VI. ENVIRONMENT			
January 11, 1970	Sec. of Defense Melvin Laird	:30	Defense of dumping cylinders of gas in ocean as safest possible method.
January 25, 1970	Sec. of HEW (former) Robert Finch	11:27	<p>Re reversal of air pollution: "The answer is yes, and the answer we have already made substantial progress under the Air Quality Control Act."</p> <p>Details of work done with airline industry and standards for exhausts.</p> <p>Pesticides: industry has acted responsibly in moving from hard pesticides to soft; mentions government's role in halting of DDT use within two years.</p> <p>Cost of pollution control to be carried by private sector; defense of Nixon's appropriations for control, and of his approach to environmental problems as one of cultural awareness and public education; federal responsibility in directing demographic development; praises Agnew's suggestions on new cities, federal mechanisms for environmental control.</p>



FACE THE NATION (Continued)

- 14 -

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
January 25, 1970	Sec. of Interior Walter Hickel	12:46	<p>Water pollution needs national commitment with federal government paying for catching up and distribution of cost over other sectors for present and future betterment; federal responsibility for public land use, demographic distribution, legislation and enforcement.</p> <p>Defense of Administration's appropriations for pollution control.</p> <p>Re crackdown on industry: "I think if you look back at the record of this Administration in the past year you will see we did exactly that within the framework of what we had to work with, like the 1965 Water Quality Act."</p> <p>"Let's take what happened after the Santa Barbara blow-out. We stopped offshore sales, we upgraded the regulations, we put in some stiff regulations, even absolute liability for pollution."</p>
January 25, 1970	Daniel P. Moynihan Counselor to the Pres. for Domestic Affairs	10:48	<p>Administration views environmental quality as a cultural matter not a consumer/business battle but also requires broad scale government planning and demographic programming; plus Federal-state revenue-sharing programs. Defense of amounts spent for pollution control.</p> <p>"Now, the President didn't just think up this environment matter. Bob Finch mentioned that this was a central issue to his campaign in previous years."</p>

C. APPEARANCES BY ADMINISTRATION  
SPOKESMEN ON CBS DOCUMENTARIES AND  
SPECIALS, JANUARY 1, 1970 - PRESENT

- 15 -

I. POLARIZATION - DISSENT

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
May 9, 1970 "THE COLLEGES, CAMBODIA, AND THE CONFRONTATION IN WASHINGTON"	President Nixon	:40	(tape) The protestors are saying they want peace which President wants also.
	Dr. James Allen, Com. of Education	:34	Re May demonstrations against Kent St. tragedy and Cambodian campaign: "Well, I'm certain that the President is very impressed with what happened today, and is listening. I don't have any doubt about that. I know he wants to listen and wants to get the views of the young people. So I believe that they did make an important point with him this week."
	Gov. Ronald Reagan	1:20	"I suggest that those across our land, and here in our state, who would use this tragedy in Ohio to further their own cause whether it be dis- agreement with national policy, or hatred for the Establishment, are contemptible in their hypocrisy."
	Secretary of HEW Finch	2:38	Re May demonstrations: "I choose to think that it's been a very helpful discussion on both sides. And I think the Presi- dent's request that we open up the Department

CBS DOCUMENTARIES AND SPECIALS (Continued)

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
May 9, 1970 "THE COLLEGES, CAMBODIA, AND THE CONFRONTATION IN WASHINGTON"	Secretary of HEW Finch	2:38	and have representatives from all of the branches of the Administration available to talk to the students meant a lot to them, and it meant a lot to us."  Support of President's attempts to meet with governors and college heads to discuss the problems.
June 5, 1970 "THE SENATE AND THE WAR" (Six Senators participated)	Sen. Edw'd Gurney	1:20	Polarization issue blown all out of perspective. Before Cambodia, war was secondary subject and polls showed people behind President. After Cambodia people still behind President according to polls.
	Sen. Rob't Dole	:08	Doesn't think war has polarized state of Kansas.
	Gurney	1:48	Great misunderstanding that country is polarized because it thinks war is taking money away from other priorities like poverty. Not true -- gives long explanation of defense spending cut-backs, in dollars and personnel.
June 12, 1970 "SIXTY MINUTES"	Att'y Gen. Mitchell	2:48	Turmoil is imported into this country by outside agitators.  Confidentiality of reporter's notes would add to balance in dissemination of news, e.g., about

CBS DOCUMENTARIES AND SPECIALS (Continued)

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<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
June 12, 1970 "SIXTY MINUTES"	Att'y Gen. Mitchell	2:48	<p>militant groups, but agrees with VP that press has overplayed dissidents.</p> <p>Civil liberties and the right to peaceful demonstration will not be impaired and the Constitution and courts will defend the rights of dissenters.</p>
III. CRIME			
January 20, 1970 "SIXTY MINUTES"	Richard Kleindienst, Deputy Attorney General	1:40	<p>"We know we have a problem in the District of Columbia and the only thing that's keeping us to having a meaningful attack on the problem, essentially are more policemen, more courts and more judges, more prosecutors, more public defenders and realistic revamping of some of the laws that relate themselves to the whole system of justice in the District of Columbia . . . More money."</p> <p>"President Nixon on January 31 . . . laid out a comprehensive program to the Congress dealing with this problem. Extensive detailed legislation has been submitted that is being studied. The Congress is going to pass that legislation in our opinion, and when it does we'll have the means, wherewithal, the resources, the men and the money to deal with this problem."</p> <p>"The long range solution</p>

CBS DOCUMENTARIES AND SPECIALS (Continued)

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<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
January 20, 1970 "SIXTY MINUTES"	Richard Kleindienst, Deputy Attorney General	1:40	to most crime in the United States, of course, is dealing with the basic social problems that bring about crime. But there has to be a short-run approach to the problem also, that while you again go to the Congress to fund meaningful programs to deal with the problems of the ghetto, the inner city, of poverty, all the things that breed crime, you also have to have a meaningful relevant short-run program such as we have enumerated in the Congress in terms of police, courts, prosecutors, defense, prisons, personnel, and legislative reform."
			The crime rate in Washington will not go down until the President's program is passed.
VI. ENVIRONMENT			
February 24, 1970 "THE ENVIRON- MENTAL CRUSADE"	Lee DuBridge, Science Advisor to the Presi- dent	:36	"Well, the President prepared a message and it was a fairly long message. But the environmental problem is such an enormous one that no finite-size message could cover all of the facets and all of the complications involved as we approach from a new point of view our environmental problem."
	Russell Train, Chairman Council on Environmental Quality	:44	"There is a tendency among the American people to think we can spend our way out of any problem. So first I think it's important to recognize that money isn't

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
February 24, 1970 "THE ENVIRON- MENTAL CRUSADE"	Russell Train, Chairman Council on Environmental Quality	:44	the real or only solution to our environmental problems. In fact, I'd be concerned that we could overspend in this field and develop a sort of a money pollution."  "I think if you tried to somehow turn a switch and clean up the environment overnight, which would be impossible, and impose all the cost of that on people overnight, you could have what you call a backlash. It would be such a shock to our social system, economic system, and our personal systems. We can't deal with the problem that way. It is too complex to lend itself to being solved by turning a switch."
	President Nixon	:44	"Restoring nature to its natural state is a cause beyond party and beyond factions. It has become a common cause of all the people of this country. It is a cause of particular concern to young Americans, because they, more than we, will reap the grim consequences of our failure to act on programs which are needed now if we are to prevent disaster later. Clean air, clean water, open spaces, these should once again be the birthright of every American. If we act now, they can be."

CBS DOCUMENTARIES AND SPECIALS (Continued)

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<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
February 24, 1970 "THE ENVIRON- MENTAL CRUSADE"	President Nixon	:44	I shall propose to this Congress a \$10 billion nationwide clean waters program to put modern municipal waste treatment plants in every place in America where they are needed to make our waters clean again and do it now."

D. APPEARANCES BY ADMINISTRATION  
SPOKESMEN ON THE CBS EVENING NEWS  
WITH WALTER CRONKITE, JUNE 7 - JULY 7,  
1970

- 21 -

I. POLARIZATION - DISSENT

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
June 12, 1970	Robert Finch	:25	Students are not aliens but our children; they should not be made the scape-goats for our fears.
June 16, 1970	V.P. Agnew	:35	Thinks Joseph Rhodes should resign from Campus Violence Commission; says he used position of trust for political gain.
June 25, 1970	President Nixon	:30	Refutes those who think America is "gripped with fear and repression and even panic."
July 2, 1970	Att'y Gen. Mitchell	1:15	Urged more lenient attitude toward political protest. "We encourage the peaceful exercise of First Amendment rights, regardless how unpopular the cause."

II. ECONOMIC CONDITIONS

June 17, 1970	President Nixon	2:10	(Segment of speech on the state of the Economy) Need for increased productivity. Wants restraint from business and labor. Will not impose wage and price controls.
July 2, 1970	Harold Goldstein (Labor Dept.)	:35	Explains first decline in unemployment in six months. Says has economic significance.



III. CRIME

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
June 11, 1970	President Nixon	:45	Congress should not play partisan politics but pass the Administration's crime bill.
June 11, 1970	V.P. Agnew	:20	Law enforcement agencies need new weapons; therefore, Congressional action is imperative.

IV. EQUAL RIGHTS

June 9, 1970	Robert Finch (HEW)	:30	Federal funds will not be used to support segregated private schools in South.
June 25, 1970	President Nixon	2:00	A greater percentage of blacks than whites have moved above the poverty line in the last 10 years. More blacks in college than there are Englishmen in college in England or Frenchmen in college in France.

V. HUMAN RESOURCES

June 25, 1970	Rep. John Anderson	:45	Overriding Nixon's veto of Hospital Construction Bill ties Nixon's hands. Congress is inconsistent in imposing spending ceiling and causing more to be spent.
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VI. ENVIRONMENT

June 18, 1970	Dr. Russell Train	:45	Proposed Environmental Protection Administration "should have the broadest responsibility to all of public interests." "Existing interagency mechanisms are cumbersome."
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THE CBS EVENING NEWS WITH WALTER CRONKITE (Continued)

- 23 -

<u>Date</u>	<u>Spokesman</u>	<u>Time (min:sec)</u>	<u>Summary</u>
June 18, 1970	Dr. Ned Bailey (Dept. Agriculture)	:30	Agriculture Department now taking action on restricting use of DDT.

EXHIBIT 2

RESPONSE BY REPUBLICAN CONGRESSIONAL LEADERS  
TO 1968 STATE OF THE UNION ADDRESS, JANUARY 23, 1968

"STATE OF THE UNION—A REPUBLICAN APPRAISAL"—CBS TELEVISION HOUR

Mr. KUCHEL. Mr. President, last night, Republican Members of the House of Representatives and the Senate spoke to the American people in a presentation properly called the "State of the Union—A Republican Appraisal."

The Columbia Broadcasting System, to its great credit, made 1 hour of time available to the members of the minority in Congress to state their views. The master of ceremonies of this television program was our friend and my colleague from California, the Honorable GEORGE MURPHY. He performed a highly credible and able service putting together in compact form 1 hour of dialog presenting the views of distinguished Republican members of the national legislative branch.

I believe that this program showed that the minority party in this country, can and will fulfill its responsibilities to the American people. We intend to present them with a program of constructive alternatives for which they yearn today.

I ask unanimous consent that statements from our great American leader, Gen. Dwight D. Eisenhower, and those of Members of the minority in Congress who participated be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

Gen. DWIGHT D. EISENHOWER. You and I—  
all of us—enjoy a precious privilege, that of  
living under the greatest self-governing society  
known to history.

To establish and sustain that society

ch-guarantees to every citizen equal before the law, our Founding Fathers intervening generations have fought hard for it. We are the beneficiaries of their blood and sacrifices. A solemn obligation rests on us today to do no less in our time. Not only for ourselves but for our children and the cause of human liberty on the earth. Under our two-party method of Government, it is essential that members of the Party not become convinced that new measures and directions are required to preserve and strengthen our free system. The reasons for their convictions should be made known to their fellow citizens. Tonight some of your elected Representatives in the Congress are sending to you their views. We of the Republican Party welcome your thoughtful attention as these views are laid before you. I know that these are critical times for our beloved country—as critical as any I have known in my lifetime. The thought, the hard work, the dedication of every citizen is now required if we are to hold true to the ideals of human dignity and liberty that are meant so much to America and to the world.

Congressman STRICKEN. It is an honor to appear on this program with former President Eisenhower. The return of the integrity he brought to public service and the conduct of national affairs is our goal. Last week President Johnson tried to tell us we're really troubled because of too rapid progress.

I disagree. The reasons are deeper. There is more than surface unrest. The cause is not progress but years of over-promise and under-performance.

In 1966 I was one of 47 new Republican congressmen who came here because Americans wanted a change and wanted new ways of solving old problems. While still a minority in Congress, we have tried to carry out our mandate for change.

We began by pressing for a permanent ethics committee in the House of Representatives. We were successful and intend to push for the high standards of conduct that you demand.

We came to Congress committed to make our government more responsive and more responsible. We have reinforced our Republican Leadership in fighting to reform the legislative branch of government. Congress must be modernized to serve you better. And that legislation is now awaiting House action.

We need a Clean Elections Law that will guarantee that you'll know what's been going on behind the scenes before you vote. And that law must be on the books for the 1972 elections.

These and other measures can help restore the faith of the American people in their government.

Americans are impatient with mediocrity. We are I. Americans are not content to sit back and watch morality become a joke or a possibility become a plaything for politicians. Nor are we willing to watch politicians build a so-called great society of big government and little people. Our purpose is a great people.

We must pioneer in government as we have pioneered in technology. America's creative talent can and must provide a government equal to our challenges and worthy of our dreams.

We must view tomorrow's promises through yesterday's performance. And yesterday's performance is not enough.

Senator KUCILL. A new attitude, new vigor, new direction, new confidence, are now required if this nation is to stem its headlong descent from a role of leadership held so long in the world.

In this 20th Century free peoples have looked to America in their struggle for human liberty. Dwight Eisenhower brought

like-minded nations together for collective security. It remains the world's best hope for just and enduring peace. But now our government clearly lacks the ability to rally our allies.

In Western Europe, despite a remarkable economic rebirth, there is growing distrust. The British pound shrinks, the shadows of the British Empire fade, and Britain herself is shut out from the Common Market by France, her one-time ally.

The integrity of the American dollar continues under foreign assault. We must put our house in order. What has happened to the British pound must not happen to the American dollar.

In the Middle East, the Soviet Union has moved into the Mediterranean, and threatens to open a new front in the cold war—playing off America's friendship to Israel against the vengeance of Arab extremists.

In Latin America, the high promise of the Alliance for Progress remains unfulfilled. Even the historic concept of freedom of the seas has been allowed to become a mockery off the Pacific Coast of Latin America.

History may yet record the Vietnam conflict as the most tragic and costly within memory. The Administration has failed to make clear our goals to friend and foe alike. It has not been candid with the American people in facing up to the complex and difficult road which lies ahead.

The nation searches for principles to guide us:

We must face the realities and accept them.

We must not be wed to past mistakes.

We must not debase our diplomacy with pledges we cannot keep.

We must never throw away what our men have fought to win.

We must rekindle the spirit of mutual trust among free peoples—mindful that America must not go it alone.

The American people yearn for a change. Our party intends to give it to them.

Congressman FONG (Opening statement). 1968 is no ordinary year.

The State of the Union is serious business.

The President came before Congress last week.

The Nation was anxious and waiting for his words.

Never were Americans hoping harder for someone to call them to action.

People all across this nation are deeply disturbed, concerned about what's going on, right here at home. I've listened to them—we all have—and every day I'm moved by the simple eloquence of their letters—their unashamed love for America.

Doesn't the President listen to any of the people?

They've seen raging violence, bloodshed, destruction and death right on their own doorsteps—their homes and stores ablaze and looted—tanks and paratroopers—not on faraway battlefields but rolling through once quiet neighborhoods and blasting snipers from roofs and office windows.

And the President could only tell us he detects "a questioning" and "A certain restlessness" among his countrymen.

We can speak far plainer than that!

Plots, murder and robbery—is that just "restlessness?"

Deepening disbelief in our nation's policies, doubts about our most sacred institutions and traditions, concern over the credibility of our government's word—the worth of our government's dollar—do you call that "questioning?"

The President's only explanation was "When a great ship cuts through the sea, the waters are always stirred and troubled."

Apparently the President has been standing on the stern—looking backward at the broiling wake—wondering which of his officers to dump overboard next!

The Ship of State is wallowing in a storm-

tossed sea, drifting toward the rocks of domestic disaster, beaten by the waves of worldwide fiscal crisis that threaten shipwreck.

The Captain should return to the bridge. We need a Captain who will seize the helm—call up full power—break out new charts—hold our course steadfast and bring us through the storm.

We need a Captain who inspires his crew to heroic endeavor.

We need a Captain with courage to clear the deck—jettison the deadweight—a Captain who learned his seamanship beyond the Potomac and the Pedernales.

It is no time to signal S.O.S. or Abandon Ship.

It's time for all hands to man their battle stations.

This great Ship of State has weathered many a terrible storm.

We will not strike our colors now.

We have just begun to fight!!!

We offer responsible and responsive leadership that looks for support to the worth and will of all our people, that turns from the tired theories and proven failures of the past to the realities of the present and presses forward on better ways to a brighter future.

Senator PERCY. Tonight most of us will go to bed in a decent home. For some Americans though, a decent home of their own remains only a dream.

Our cities are beset with harsh living conditions, ranging from traffic congestion to air pollution. But the most critical urban crisis is housing.

The public housing record is not good. Urban renewal has demolished more houses than public housing has constructed. Too often, public housing has only served to crowd thousands of poor families together in high rise ghettos. These have become the vertical slums of our cities.

To help all Americans to own their own home, we support a National Home Ownership Opportunity Act. This Act would allow a new home owner to work on his own house, and have his labor contribute to his down payment.

The Act would combine the resources of government and private industry by drawing upon private expertise to assist low income families in building or rehabilitating homes.

It would also allow the government to financially assist low income families who cannot pay commercial interest rates.

There is a great opportunity here for government and private industry to work together in the good of the country. As the Homestead Act opened the West, this could be the 20th Century Homestead Act, helping to remake the face of our cities.

Low income families deserve our help while striving to own their home. This nation requires a realistic housing program, not more false promises. We must begin to offer to the slum dweller the hope that he as an individual can succeed.

Congressman QUINN. The cities are boiling with frustration. Frustration can be a man without a good job. We need an immediate program to provide hundreds of thousands of jobs in private enterprise. That's the only way we can provide jobs fast enough to cool the seething cities.

Yet the Johnson Administration has opposed every Republican effort to involve private enterprise in the poverty program. They've been long on promises—short on performance. Now, at long last, the President is beginning to talk about jobs for the poor in private enterprise. He'll be talking more about private industry doing the job his poverty war just has not done.

To the President who has been opposing our approach for four long years, and now says he will do it our way, we have this challenge.

We challenge you to support our Human Investment Act, that would encourage busi-

and industry to train under-employed men and women. We challenge you to support an Industry Youth Corps, not just government youth corps. Support our call for unitary boards of business men in every county across the country to mobilize the community to help the poor get off welfare rolls. Do not pour more money into old programs that don't work. Do provide training for jobs that are waiting to be filled. Use poverty dollars wisely to involve the poor in helping themselves, not to feed bureaucracy or city hall patronage.

Many of the prisoners of poverty can learn to earn. These Americans need their homes filled. This country must launch a new decade for human renewal.

Words and more words are not enough, Mr. President.

**Congressman POPE.** The first duty of government is to maintain law and order. The peace and tranquility guaranteed by the Constitution must be restored.

No nation in history has been able to survive the collapse of its moral structure and the anarchy and lawlessness that follow.

Look at the situation confronting us today.

Murder is epidemic. Rape is commonplace—Burglary happens so often it is no longer news. Pornography, dirt and dope are peddled on nearly every street corner. Crime has grown six times as fast as the population.

Despite the urgent warnings of F.B.I. Director Hoover and law enforcement officers everywhere, the Johnson Administration has failed to take effective action. The Attorney General has banned the use of modern investigative techniques. The soaring increase in crime has been called just "a little bit" of an increase.

The recent statements of President Johnson that reflect a new awareness, some hardening of purpose, are welcome.

State and local law enforcement officers must have help, but without Federal domination and control. Our Law Enforcement and Criminal Justice Act that passed the House last year provides such assistance.

We must escalate the War against Crime so that all citizens, regardless of color, will be safe in their home, at their places of business and on the streets.

The American people want the "enforcement" put back into law enforcement.

**Senator ROBERT P. GAVRIN.** If a single thread runs through Republican thinking, it is an abiding faith in the individual.

Over the years, Republicans have stood up—not only for the public interest and for the right of workers to join unions—but also to make sure that the individual union member is not relegated to second-class citizenship.

Today, American workers are deeply concerned as they see the collective bargaining process breaking down . . . as they see strike pay increasing by 96% under the Johnson Administration.

They're not satisfied with an NLRB that distorts the law. And they believe their union dues ought to be used strictly for union business—not for politics.

Back in 1966, President Johnson pledged that he would propose and press the Democratic-controlled Congress for certain reforms, pointing particularly to the need for better legal machinery to help in settling strikes.

Needless to say, 1966 has passed, 1967 has come and gone. And America listened carefully to the State of the Union message last week. But, although paralyzing strike after strike has emphasized the problem, President Johnson still has not delivered on that 1966 pledge.

In this troubled area, our Nation desperately needs leadership—new leadership with vision and courage to stand up for the public

interest and the rights of the individual worker.

After winning that Senate race in Michigan not so long ago, I'm more concerned than ever that millions of American workers—who refuse to take political marching orders from anyone—are eager to support the work in developing new legislation.

**Congressman BEHN.** We hear a great deal today about a tax increase. A tax increase to halt inflation, a tax increase to check the outflow of gold, a tax increase to restore a balance in the Federal Republic. I remind that before we consider a tax increase we must get our own fiscal house in order.

The Nation faces this year—as it did last—a tremendous deficit in the Federal budget. But in the President's message there was no sense of sacrifice, no acknowledgment of inflation, no hint of the need to put first things first.

This reckless policy has imposed the cruel tax of rising prices on the people, pushed interest rates to their highest levels in 100 years, sharply reduced the rate of real economic growth, and saddled every man, woman and child in this country with the heaviest tax burden in our history.

And what does the President say? He says we must pay still more taxes and he proposes drastic restrictions on the rights of Americans to invest and travel abroad. This is a bankrupt policy.

If the President wants to control inflation, he's got to cut back on Federal spending. The very best antidote to inflation is cutting back on spending. The best way to stop the gold drain is to live within our means here at home.

We pledge ourselves to find solutions to America's most urgent problems in health, housing, education, jobs and security. But we shall never sacrifice the American people on a golden altar of economic expediency.

**Mrs. MAY.** The President said a lot about protecting the consumer in his State of the Union Message the other night. But he did fail to tell us about the protection we need most of all—effective protection from rising prices.

Now if there is anyone who knows just how fast prices are rising, it is those of us who work in the kitchen and shop in the grocery store, and when the people running our government tell us that a little rise in prices is a good thing, we say: Maybe so, but you're carrying a good thing too far!

With skyrocketing prices and increasing taxes, it is little wonder American workers want more take-home pay to keep pace with their cost-of-living. And now we even see the threat of wage controls.

This must stop. The American family has to balance its budget and the President can do more to get things back in balance in his budget.

You don't have to be an economist or a big government planner to know that rising prices, the biggest threat to every family, stem from unsound government policies.

I think I speak for American women—and men too—when I call upon the President to stop wasting our money and make it worth something again.

**Mr. BOB MATTHEWS.** I have faced some high hurdles in my time. But, you know, they're nothing compared to the hurdles facing the American farmer today. I know this because I represent a farm area and I hear from them every day. The Johnson Administration, by deliberate policies such as the dumping of grain reserves, has pushed farm income down. This has left the farmer with an ever-declining share of America's food dollar.

Government trade policies have destroyed historic markets and encouraged imports.

In spite of misdirected and self-defeating

Federal programs, the energy and ingenuity of the American farmer have outpaced the tremendous growth of our population. They've fed millions of hungry people around the world. Our farmers must have the opportunity to run their own farms with minimum government interference and to join together to negotiate for better farm prices. The most productive people in our economy, the American farmers, took a pay cut of a billion and a half dollars in 1967, and the situation is getting worse. Farm prices are at 74% of parity last year, the lowest level since 1933.

In the face of these shocking failures, the Administration and the Secretary of Agriculture are determined to make their control a permanent part of the farm scene. Their programs are geared to the tired theories of the 20's, not to the challenge of the 70's.

Every time the Johnson Administration comes up with a new farm program, the farmers pay more and get less. We think it's time for a change . . . and so does the American farmer.

**Mr. LARSEN.** Republicans believe there is a better way for Americans to do things than the way of the great planned society. President Johnson's solution is to pile programs upon programs, regulated, administered, and directed from Washington.

Republicans would instead establish revenue sharing with our states and localities to return a percentage of Federal income taxes with no strings attached. We would consolidate the hundreds of existing programs into block grants that would be both more flexible and more effective in getting the job done. And we would provide tax credits both for state and local taxes paid and for such special purposes as education and job training.

Our problems can only be solved if all levels of our society—governmental and private—pull together in a true partnership. This means that we have to strengthen states and localities, not weaken them. The job is not being done today because local and state officials don't have the money. They have the ability . . . and the knowledge—but they lack the resources because the Federal tax collector has gobbled them up.

Republicans have faith in our Governors and State legislators. We believe in our Mayors and school board members. We think you can trust them to do what is right for the people and the community they serve. When they don't, we have faith that the people will replace them with office holders who will. That is what our representative government is all about.

Revenue sharing, together with block grants and tax credits, would restore true Federalism in America. It would give control back to the people, provide the tools for programs that work, arrest the drift of power to Washington, and preserve the fundamental freedoms of the American people.

**Mr. HOWARD H. BAKER, JR.** During the past few minutes, we have heard of domestic chaos in America. But you see, in this nuclear age our concern can be no less for the bewildering array of confusion and chaos abroad. Whether we speak of Vietnam or Cuba, West Berlin or Latin America, the Middle East or Africa, there is a common theme: America is forfeiting its leadership. The credibility of our intentions, our will, our economic solvency is being questioned. Not since the Civil War has the United States been so divided. Never has American prestige abroad fallen so low.

We find NATO in shambles and summarily evicted from France. We find the seeds of world war sown in the strife-torn Middle East; a restless plant in Latin America is just beginning to arouse, as are the emerging Nations of Africa. Asia is measuring



the will and wisdom of the American posture.

Is the free world losing faith in our leadership. It is also losing hope that we have the will to order our own house. Thus, the international and the domestic problems merge, as Nations rush to convert dollars to gold. And what must we do?

We must have bold unifying leadership. We must establish credibility for the humane motives of America and the will to resist aggression. We must restore confidence in the American economy, before it is too late. We must help those who are willing to help themselves, not with just handouts which so often produce bitterness and resentment but with dignity and grace and respect. We must lay aside the tired old techniques of the past and stand ready to innovate, to use our vast nuclear technology to produce fresh water from sea water, to produce abundant food supplies and energy, employed to promote cooperation instead of conflict. We must be as concerned with preventing another Vietnam as we are with bringing this one to an honorable conclusion.

There must be a new direction, new leadership, credible and sound. And to secure these ends we pledge ourselves, singly and in bipartisan effort, now and in the future.

**Mr. Hugh Scott.** One of the greatest dangers to world peace is ticking away in the Middle East. The President's State of the Union Message was vague about U.S. efforts in that vital area of the world—because the Johnson Administration's policies are vague. The Soviet Union relishes that kind of situation.

Last year, the Soviets roared the Arab states into a military showdown with Israel. While the United States stood aloof, the Israelis fought a brilliant war and beat both the Arab armies and their expensive Soviet weapons.

The Soviet Union is pouring modern tools of war into a Middle East bazaar with these new Soviet jet fighters and bombers.

As the Soviets rush in to become the major force in the Middle East, with a policy of turbulence, what is United States policy? No one seems to know.

The U.S. is doing nothing to convince the Soviets of the grievous world danger in this arms race. Yet continuing sales of Soviet arms to Arab countries force Israel to find deterrent weapons.

Where is the initiative of the Johnson Administration to get Arabs and Israelis to the same peace table and preferably through direct talks?

The greatest insurance against Soviet domination of the Middle East is a strong Israel, living at peace with its Arab neighbors.

Peace in the Middle East and survival of gallant Israel depends upon a firm and clear American policy.

**Senator Frank H. Donner.** The peace of the Free World depends largely on American strength—economic, moral and military strength.

The right to wake up unafraid is every American's heritage, secure in the knowledge that this country is too strong to attack. There can be no partisan politics in our efforts to maintain this goal. It is too important to mankind. But let's look at the record.

We are told of bomb shortages, automatic rifle malfunctions and lack of proper jungle gear. We have no new fighter aircraft and the TFX is still a question mark. 16" naval fire power from battleships have been literally kept in moth balls, and repeated Congressional efforts to obtain an anti-missile system have been summarily thrust aside until this year.

In the meanwhile, the Red Chinese have been steadily expanding their nuclear capability. The Soviets have surpassed us in de-

liverable nuclear megatonnage and they have developed a fractional orbiting nuclear bomb and six new fighter-bomber aircraft systems. They have the largest submarine fleet in the world and they are well on their way toward completion of an anti-missile system.

We are menaced now—not tomorrow or next year or the next decade, but now. The overwhelming strategic superiority developed under President Eisenhower has rapidly disappeared. This Administration has developed a strange new doctrine—that Soviet strategic equality is better than American supremacy.

That dangerous doctrine must be reversed while there is still time. Peace, with freedom, is inseparable from American strength. Let's keep it.

**Senator Tower.** I'm here tonight to tell you where we believe the great majority of Americans stand on Vietnam.

First and foremost we stand for the all-out support of our half-million fighting men and women—material support and moral support.

We stand for military success in Vietnam that will enable the Vietnamese to rebuild a free nation.

We stand for an era of peace and stability that will embrace all of Southeast Asia.

We stand for the effective utilization of America's vast air and sea superiority.

We stand for quarantine of the enemy's supply lines so that he can no longer fight.

We stand for firm resistance to naked Communist aggression in Vietnam as we did in Greece, Berlin, Korea and Cuba. We also stand for the complete protection of American ships in international waters.

We note that in the last few months the Johnson Administration has been vigorously prosecuting the war in Vietnam. But, we also note that for far too long it followed a self-defeating policy of "gradualism."

That "gradualism" policy caused us to pull our punches; it prolonged the fighting; it cost American lives unnecessarily. This war could be over today if the Johnson Administration had acted with determination instead of with vacillation.

It is no wonder that the communist enemy is confused about American intentions and doubts American determination. The Administration's ping-pong pronouncements have left even Americans confused.

Throughout this century Republican Administrations have understood how to maintain world peace. Today, we understand what peace demands.

The nation suffers from a "peace gap" which we are determined to close.

**Congresswoman Charlotte T. Reid.** Yes, I am a mother. Two of my four children are sons—one of whom served four years in the Marine Corps and the other left for Vietnam just last week. I believe that not only all parents, but all thinking Americans, are as deeply distressed as I am by complacency, disunity, and protest here at home.

There are many problems which threaten our American way of life—crime, disrespect for law and order—but particularly the war. Our men in Vietnam are working to insure the freedom and happiness of all of us—of our children and, indeed, our grandchildren too.

So—we must impose on our selves the kind of discipline we impose on our soldier sons. While we have American troops in Vietnam, we must be certain that they have our wholehearted support. We must be certain that the Johnson Administration knows what it is trying to do in Vietnam and that it knows how to do it. Above all, there must be no false promises.

More than 16,000 families have learned the final, terrible price of freedom. Yet, the casualty lists continue to rise. We must be certain that the lives which have been lost will not have been sacrificed in vain.

**Congressman Gerald Ford.** What you've seen is a picture of our party, how we look, what we think, how we feel and why we believe there must be better ways to run our country.

Only by facing facts can we, as one nation and one people, move forward to forge in our time a more perfect Union.

It seems strange not to have Senator Dirksen by my side. We've missed him tonight and want him back soon.

We have told the truth as we see it about the State of the Union.

We're proud of our party and its leaders from Abraham Lincoln to General Eisenhower. We're proud of legislators like those you've just seen—of our 26 great governors and the young men and women coming up and taking charge.

Two-party competition made America great and keep it free. When stakes are high and problems grave, we need more airing of the issues—not less.

We, the most powerful nation and people in history, lost and turn with the tides of discontent, seethe with the injustices of hope denied, grope with the burdens of a war unwon.

In the year just passed we have watched our cities erupt and our savings erode.

But Americans are neither quitters nor losers.

We can take the hard truth, make the hard choices, and put our country's future first.

Physical power and spiritual strength we have. Great leadership we shall find.

Now we must fight together—not fight each other. And we, each one of us, must look deep into his conscience, searching to establish what is truly American, hoping to find a new America that unites the dreams and serves the needs of all of us.

This generation of Americans, and the next and the next, will once again establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty.

We will not be distracted by the shrill discords of the spoilers.

We will not be diverted by the doom's day fantasies of the fearful.

Let us instead hear this: "Be strong and of a good courage, be not afraid, neither be thou dismayed; for the Lord thy God is with thee."

We will go forward with high hearts and ready hands for the hard work ahead.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing  
Petition for Reconsideration were hand delivered, this  
third day of September, 1970, to the following:

W. Theodore Pierson, Esq.  
Pierson, Ball & Dowd  
1000 Ring Building  
Washington, D.C. 20036

Attorney for the Republican National Committee

David H. Lloyd, Esq.  
1229 - 19th Street, N.W.  
Washington, D.C. 20036

Attorney for the Democratic National Committee

*Daniel Marcus*  
Daniel Marcus

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In re Petition of )  
 )  
REPUBLICAN NATIONAL COMMITTEE )  
For Relief Against )  
 )  
COLUMBIA BROADCASTING SYSTEM, INC.)

To: The Commission

OPPOSITION OF REPUBLICAN NATIONAL COMMITTEE  
TO COLUMBIA BROADCASTING SYSTEM, INC.  
PETITION FOR RECONSIDERATION

The Republican National Committee (RNC), by its attorneys, hereby opposes the Petition for Reconsideration filed by the Columbia Broadcasting System, Inc. (CBS) on September 3, 1970, to that portion of the Commission's Memorandum Opinion and Order released August 18, 1970, (FCC 70-881), requiring CBS to afford time to the RNC or some other partisan Republican spokesman to respond to a July 7, 1970, broadcast on the CBS network by the Chairman of the Democratic National Committee (DNC) on the CBS network. In support of its opposition, RNC states as follows:

DISCUSSION

As in the case of the DNC Petition for Reconsideration to which we have previously replied, a fundamental defect permeating the CBS Petition is its refusal to recognize or accept the Commission's well-supported factual conclusion that the DNC broadcast of July 7, 1970, was partisan rather than issue-oriented and that it was that factor alone which brought the July 7 broadcast within the "political spokesman arena" of the Fairness Doctrine.



CBS' contention that, "The RNC petition failed to point to any content of the July 7 broadcast supporting the contention that it was basically party-oriented rather than issue-oriented; nor does the Commission's opinion analyze the content of the broadcast," (Pet. p. 7) is erroneous. Basically, RNC, in its original Petition for Relief, alleged that Mr. O'Brien's speech was in its entirety<sup>1/</sup> party-oriented. As we stated therein, "On the whole, [Mr. O'Brien's broadcast] was a political attack on the President and his party coupled with a closing commercial that funds be contributed to support DNC's goal of ousting Republicans from office. It directly raised the fresh issue not specifically treated by any Presidential speech: which political party should hold power." In further elaboration of this point, RNC stated as follows in its Reply to the CBS Response:

"The O'Brien format was to take tapes and quotes from President Nixon's previous appearances, treat them as promises, and then attempt to show that the performance had not matched these promises. Primarily, his treatment of other issues and problems was to acknowledge their existence and assert that the President had not solved them, all of which led up to the following punch-line:

'The Democratic Party and the Democrats in Congress accepted that challenge a decade ago -- and we rededicate ourselves today.'

"And after that the following message:

'For more information concerning the Democratic Party's alternatives to the policies of the Nixon Administration, write: Democrats, Box 3456, Washington, D. C. 20010'.

"Then, after five minutes of commentary, there was an appeal to the viewers to send in money for the clear and ostensible purpose of ousting the Republican Party from power."<sup>2/</sup>

It was further noted that while Mr. O'Brien recited the problems

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<sup>1/</sup> With the possible exception of two minutes.

<sup>2/</sup> Reply of the RNC to CBS Response, p. 1-2.

facing the nation, on nearly all such issues he was remarkably neutral and presented firm convictions almost solely on the issue of "which party."

RNC submitted the complete script of the O'Brien July 7 broadcast as part of its Petition for Relief. It was with this script before it that the Commission concluded that, with the possible exception of two minutes of the O'Brien broadcast directed to the Cambodia situation, the 25-minute O'Brien broadcast had been "person or party" oriented rather than issue-oriented. (Op. n. 25, p. 23, par. 57, p. 24). Contrary to CBS' allegations (Pet. p. 7), RNC did not proceed on the assumption that no matter what was actually discussed by Mr. O'Brien his status as party chairman transformed the broadcast from one presenting substantive issues into one that was peculiarly partisan. Rather, RNC permitted the content of Mr. O'Brien's broadcast to speak for itself. It was this conclusion that the broadcast was "person or party" oriented which led the Commission to hold that the July 7 broadcast fell into the "political spokesman arena" which raised a new issue creating new and different fairness obligations on the part of CBS.

CBS alleges that the Zapple ruling<sup>3/</sup> cited by the Commission is inapposite here since that ruling was directed to a situation limited to spokesmen for specific candidates. This is clearly an overnarrow construction of the principle underlying the Zapple ruling. As stated by the Commission in this connection, (Op. par. 56, p. 24) "... if during an election period, a network sold time to the RNC Chairman who made an attack on the Democratic Party, the fairness doctrine would be applicable, and time would have to be sold, upon request, to the DNC for a response, and, alternatively, "If the attack had been made on free time, then free time should be afforded for the response." Manifestly, the principle of the Zapple ruling is equally as applicable to a spokesman for a political party situation as it is to a spokesman for a specific candidate situation

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<sup>3/</sup> Letter to Mr. Nicholas Zapple, 23 FCC 2d 707 (1970).

since, in either situation, the right of the electorate to be informed is the ultimate right to be protected.<sup>4/</sup>

CBS contends that the Commission's decision in the Hays ruling in 1968 that the response of Republican Congressional leaders to President Johnson's State of the Union Message did not give a right to further reply rights for Democratic spokesmen cannot be reconciled with the Commission's ruling in the ruling of the RNC Petition. CBS has ignored the substantial clarification of Fairness Doctrine obligations made by the Commission and the courts since the Hays 1968 decision,<sup>5/</sup> which indicate that the Hays ruling, if made today, would be different from that rendered in 1968.

Faced with the irrefutable evidence that the O'Brien broadcast was "person or party" oriented, CBS now seeks to justify the broadcast by attributing a partisan orientation or an "indirect partisan impact" to the President's remarks and appearances. (Pet. pp. 9-14). While conceding that the President's "need to obtain significant support from members of the opposition in Congress (whether or not the opposition party is in control of either House) militates against blatant partisanship on the part of the President" (Pet. p. 9), CBS nevertheless has culled the records of the President's remarks during his first eighteen months in office and has cited five short and transient responses made by the President during press conferences which they construe to be partisan in nature. If this is all that CBS could uncover concerning alleged partisan attacks made by the President in the 37 live nationwide appearances he made during his first eighteen months in office, it is readily apparent that his appearances could not be characterized as "person or

<sup>4/</sup> It is also irrelevant to the issue that the July 7 broadcast did not result from a request by DNC for broadcast time, but rather from the affirmative voluntary decision of CBS. (Pet. p. 8). The applicability of the Fairness Doctrine is not dependent upon whether a controversial issue is created by the voluntary action of the broadcaster or pursuant to a request for time by some person desiring to air one side of a controversial issue.

274/ See Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 267, and Zemel ruling, *supra*.

party" oriented rather than issue-oriented and thus do not resemble in the least the 25-minute blatant partisan attack made by Mr. O'Brien during the DNC broadcast of July 7, 1970. Moreover, an examination of examples cited by CBS reveals that many of them involved requests of Congress to act on the administration's program or criticism of Congress for not so acting. Since Congress is made up of both Democrats and Republicans and since there are members of both parties who support and oppose various administration proposals, it takes a strained construction to construe such remarks by the President as partisan in nature limited to an attack on the Democratic members of Congress as such. None of the remarks cited by CBS could be construed as creating a sharply defined issue as to which party should govern.

CBS' elaborate documentation of the extensive presentation by CBS during the past several months of the views of President Nixon and other Republican spokesmen on various issues mentioned in the July 7 broadcast set forth in Exhibit 1 to the CBS Petition is irrelevant to the issue at hand. None of the material quoted in Exhibit 1 dealt with the "person or party" issue raised by Mr. O'Brien for the first time concerning which political party should hold power.

CBS has raised a question as to the nature of the supervision it might have exercised in connection with the DNC broadcast so as to avoid the problems raised by this case. The Commission's Opinion answers this question quite clearly. If CBS intended the DNC broadcast to be issue-oriented, it should have exercised such supervision as was necessary to make certain that it was issue-oriented. Having not exercised such supervision, CBS permitted the broadcast to enter into the "political spokesman arena" which placed new and different obligations upon CBS than would have been the case if the program had remained issue-oriented as CBS has stated it intended.<sup>6/</sup> CBS' implication that journalistic supervision

<sup>6/</sup> It is noteworthy in this regard that the Commission's Opinion placed no prohibition or restriction upon CBS' journalistic right to permit the broadcast of purely partisan statements by political parties subject only to the political spokesman fairness principles covered by the Zapple ruling. supra.

on its part is inconsistent with the Commission's holding in Part C of its August 18 Opinion that an "uninterrupted opportunity" must be provided for a response by an appropriate spokesman for the opposition to the President on the Indochina war is a makeweight. (Pet. p.15-16). While the Commission held that an "uninterrupted opportunity" should be provided for such responses, it did not hold that CBS could not exercise the necessary supervision to assure that responses be directed to the Indochina war issue rather than ranging off into some totally unrelated "person or party" oriented subject matter. As the Commission implicitly recognized in the instant case, a licensee does not have to permit a responder under the Fairness Doctrine to depart from the issue at hand and discuss anything he desires.

CBS cites a parade of horrors of what might occur if the Commission's ruling on the RNC Petition is allowed to stand. (Pet. pp. 16, 22, 24). Cutting through these examples CBS' basic contention is that under the Commission's ruling any attempt to balance Presidential appearances through presentation of a response by those of a different political persuasion will fail, since any balance thus achieved could be immediately destroyed by the duty to present the President's views again through some other spokesman of his party. (Pet. p.16). CBS also suggests that the RNC ruling, if affirmed, would apply to any response to a Presidential broadcast by any political figure regardless of the issues discussed. These arguments are clear distortions of the scope of the Commission's Order. Thus, the Commission explicitly held that its holding was limited to the facts of this case and specifically to the one DNC broadcast of July 7. It also rejected the contention that a national committee is an inappropriate spokesman to respond to policy issues raised by Presidential appearances. There is nothing explicit or implicit in the Commission's decision which indicates that discussions of views on controversial issues contrary to those expressed by the President by someone of different political persuasion would be construed to be partisan-oriented solely because of this fact. On the contrary, the



Commission made perfectly clear in its Opinion that its only reason for creating a right of reply for RNC was that the O'Brien speech was partisan rather than issue-oriented. If the O'Brien speech had been issue-oriented, no such right of reply would have been created in the political spokesman arena. Thus, there is no merit whatsoever to CBS' suggestion that if the RNC ruling is affirmed, it would apply to any response to a Presidential broadcast by any political figure regardless of issues discussed. Furthermore, the Commission has made clear that the question of whether a discussion is "issue-oriented" or "party-oriented" is not to be determined on the sole basis of whom the spokesman may be but rather on the form and content of the discussion itself. The problem of making such a determination is no greater than the problem of determining any other issue of fact which may arise under the Fairness Doctrine.

Finally, we believe that it is singularly inept for CBS to juxtapose the various appearances of the President on television against the "single 25-minute broadcast" by DNC without reference to the balance achieved by the network's presentations of numerous other spokesmen who have expressed views contrary to those expressed by the President such as those which CBS has so elaborately documented in recent proceedings.<sup>7/</sup> Nor can we believe, after CBS' numerous recent arguments to the contrary, that it is here urging that the Fairness Doctrine is a person-or-party-oriented policy much after the fashion of the equal time provisions of Section 315 which compels it to grant the "Loyal Opposition" (DNC) the chance to speak whenever the President speaks regardless of the issues raised by the President and without regard to the issues, new or old, treated by the DNC appearance.

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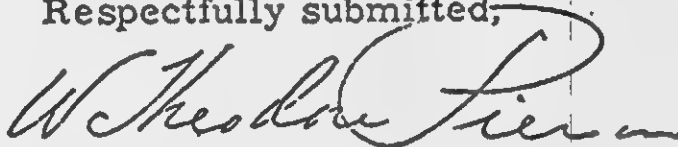
<sup>7/</sup> See for example, CBS documentation in exhibit attached to its July 22, 1970, Response to the Democratic National Committee Request for a Declaratory Ruling Concerning Access to Time on Broadcast Stations.\*

CONCLUSION

On the basis of the foregoing premises and all of the facts of record, it is respectfully submitted that the Petition for Reconsideration filed by the Columbia Broadcasting System, Inc. in the above-entitled proceeding should be denied.

The Commission has recently stated that it expected all pleadings to be filed by mid-September and did not intend to permit resolution of the issue to be unduly delayed. (Pub. Not., Rep. No. 9301, Aug. 28, 1970). In the interest of expediting the final resolution of this matter, we have accelerated the filing of this Opposition to a date considerably less than the ten days permitted by the rules. In line with the Commission's statement that all pleadings in this proceeding should be filed by mid-September, we respectfully request that, in view of our accelerated filing of this Opposition, CBS be ordered to file any reply it may desire to file thereto on or before September 15, 1970.

Respectfully submitted,



W. Theodore Pierson  
PIERSON, BALL & DOWD  
1000 Ring Building  
Washington, D. C. 20036  
Attorneys for  
Republican National Committee

September 8, 1970

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Opposition of Republican National Committee to Columbia Broadcasting System, Inc. Petition for Reconsideration were hand delivered, this eighth day of September, 1970, to the following:

Joseph DeFranco, Esq.  
2020 M Street, N.W.  
Washington, D. C.  
Counsel for the Columbia Broadcasting System, Inc.

J. Roger Wollenberg, Esq.  
Wilmer, Cutler & Pickering  
900 17th Street, N.W.  
Washington, D. C.  
Counsel for the Columbia Broadcasting System, Inc.

David H. Lloyd, Esq.  
1229 19th Street, N.W.  
Washington, D. C. 20036  
Counsel for the Democratic National Committee

Vernon C. Kohlhaas  
Vernon C. Kohlhaas



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In re Petition of )  
 )  
REPUBLICAN NATIONAL COMMITTEE )  
For Relief Against )  
 )  
COLUMBIA BROADCASTING SYSTEM, INC. )

To: The Commission.

REPLY OF THE DEMOCRATIC NATIONAL COMMITTEE

The Democratic National Committee (DNC), by its attorneys, hereby submits its reply to the Opposition of the Republican National Committee (RNC) to DNC's Petition for Reconsideration filed on August 20, 1970.

RNC's Opposition to DNC's Petition for Reconsideration is a hodgepodge of misstatements, inconsistencies and non sequiturs.

RNC has either honestly misunderstood DNC's position or it has deliberately misconstrued it in an attempt to divert attention from the critical issue in the case. That issue is whether a 24-minute broadcast by DNC at 10:30 p.m. on July 7 so imbalanced CBS' previous 18 months of broadcasting -- including 434 minutes of prime time presentations by President Nixon -- that CBS is required under the fairness doctrine to permit RNC to respond.

RNC's fundamental misstatement -- made no less than three times in its nine-page brief (pp. 2, 3, 8) -- is the assertion that DNC is claiming "a right of access to broadcast facilities . . . over and beyond the Fairness Doctrine right of the public to be informed." RNC then compounds its mischaracterization of DNC's position with the contention that DNC is rearguing its petition to the Commission of May 19, 1970.<sup>1/</sup> Nothing could be farther from the truth. The May 19 petition dealt with the divergent policies of more than 7,000 broadcast stations regarding the sale of air time to responsible entities. The instant controversy concerns only the question of whether one broadcast on one occasion has violated the fairness doctrine. There is nothing involved here "over and beyond" the fairness doctrine.

DNC's position is simply that the Commission failed to apply correctly the well-established principles of the fairness doctrine when it considered the script of the July 7 broadcast in isolation or only in connection with CBS' broadcast of five Presidential addresses on the war in Indochina. It is axiomatic that under the fairness doctrine the Commission must consider the broadcaster's overall presentation on the issues involved

<sup>1/</sup> Democratic National Committee, FCC 70-861, released August 12, 1970.

in evaluating whether there has been a balanced and fair discussion of contrasting points of view. The Commission's decision -- and the record upon which it was based -- demonstrates conclusively that the Commission failed to make this essential investigation.

RNC is schizophrenic on this point. First, it notes "DNC's faulty understanding of the Fairness Doctrine" because of DNC's catalog of "a long list of subjects with which the President dealt in his appearances . . . without any consideration of balance achieved by the network's presentations of other views in similar or dissimilar formats or modes . . . ." (P. 2, emphasis added.) RNC would thus seem to concede that CBS' prior presentations must be considered. Yet, incredibly, one page later, RNC makes the revealing statement: "DNC's elaborate attempt to demonstrate that imbalance exists in discussion of the issues is completely irrelevant." (P. 3, emphasis added.)

Balance is the only consideration which is relevant. We have respectfully urged the Commission to reconsider the gaping imbalance which had existed -- and, of course, in large measure still exists -- prior to the July 7, 1970, broadcast. In the 18 months prior to DNC's 24-minute broadcast, CBS, like the other major television networks, had telecast

- Four hundred thirty-four minutes of President Nixon's prime time presentations, covering a wide range of issues, including each one discussed in the July 7 broadcast;
- No less than twenty-three other live Presidential presentations, including a well-publicized twenty-two minute address at Noon on the state of the economy, which included several undisguised attacks on the Democratically controlled Congress;
- By CBS' count, over one hundred minutes of statements by other Administration or Republican spokesmen on the identical issues discussed on the July 7 broadcast.<sup>1/</sup> (See Appendix to CBS Petition for Reconsideration, filed September 3, 1970.)

During this period, CBS and the other networks persistently refused to permit any effective reply to the Presidential presentations. Yet, RNC apparently insists that all of these presentations were somehow unbalanced by the 24-minute July 7 broadcast.

As with the issue of balance, RNC's brief is split against itself on the question of the partisan nature of

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<sup>1/</sup> These 100 minutes were accumulated in the six-month period prior to the July 7, 1970, broadcast. It may reasonably be assumed that no less than twice that amount was amassed during the first 12 months of the Nixon Presidency.

the July 7 broadcast. First, RNC states that a "fundamental defect permeating the DNC petition is its apparent failure to recognize the Commission's well-supported factual conclusion that the DNC broadcast of July 7, 1970, was partisan . . . ." (P. 3.) On the next page, however, RNC writes: "Conceding the partisan nature of the O'Brien broadcast, DNC now seeks to justify the broadcast by attributing a partisan orientation to the President's remarks." (P. 4, emphasis added.)

To clear up RNC's obvious confusion, we reiterate our belief that the July 7, 1970, broadcast was partisan in precisely the same manner that virtually every one of the President's appearances has been partisan. Each side has presented his party's view on the critical issues of the day and has suggested the other party's failure to deal with the matters successfully. Certainly RNC does not mean to suggest that the Republican National Committee has a view different from that expressed by the President on the war in Indochina, the economy or crime. This view has been heard repeatedly by the American television public, and CBS should not be forced to broadcast further reiterations of it by RNC or other partisan Republican spokesmen.

RNC apparently contests the objectively verifiable fact that President Nixon has used the forum of television

repeatedly to make blatantly partisan attacks on former Democratic administrations, the incumbent Democratic Congress and even on individuals who have served in previous Democratic administrations. RNC alleges that after an "exhaustive search" DNC could cite only three blatantly partisan attacks. We had assumed that RNC was familiar with the meaning of the words "for example" which appeared immediately before the three illustrations (DNC Pet., p. 8). The record is replete with instances in which the President has made such partisan attacks. We did not believe at the time of the filing of our petition, nor do we believe now, that it would aid the Commission in a resolution of this matter to set out each instance of Presidential partisanship.

It is, however, worthwhile noting that RNC is simply wrong in asserting that the July 7 broadcast "made no attempt to reply to the President's statements in the three examples" of partisanship cited.

With respect to "jawboning" which President Nixon termed "hypocritical and dishonest," Mr. O'Brien stated: "The President must use his great personal influence to roll back inflationary wage and price decisions just as President Kennedy and President Johnson did on many occasions."

With respect to Congress' record on appropriations, which President Nixon called the "worst in [our] history," Mr. O'Brien stated:

"Only a few days ago Congress overrode another Nixon veto and so restored funds to build desperately needed hospitals and mental health facilities for the nation's sick people. The President turned down this bill because he said it was inflationary. But more than two-thirds of Congress -- including a majority of the members of the Republican Party -- voted to allocate for hospitals some of the monies cut from the budget.

\* \* \*

"Once again, we must look to Congress for leadership.

"It was Congress that more than doubled President Nixon's initial request for an increase in Social Security, providing a badly needed 15% increase."

These two illustrations also serve to demonstrate again the emptiness of RNC's basic position that the July 7 broadcast was not issue oriented. Virtually every word in the July 7 broadcast was directed to an issue of public importance which had earlier been addressed on the CBS Network at greater length by the President and other Administration and Republican spokesmen. As noted in our original petition, the Commission cited no issue, and could cite no issue, which was raised for the first time in the July 7 broadcast. Given this fact and the fact that RNC apparently rests its case on the proposition



that the program was not issue oriented, we are, of course, completely mystified by RNC's concluding assertion that "all that the Commission has done is rule that DNC's July 7 broadcast raised a new issue to which the Fairness Doctrine is applicable . . . ." (P. 8, emphasis added.)

The logic in RNC's concluding argument that DNC has no standing to seek reconsideration of the Commission's decision is similarly baffling. RNC's syllogism appears to be as follows: (a) there is no right of access to television "over and above" the fairness doctrine; thus (b) there was no "imbalance" prior to July 7, 1970; and thus (c) there can be no injury to DNC in requiring RNC to have air time to rebut DNC's response to the President.<sup>1/</sup> A more totally unrelated set of propositions is hard to imagine.

It is not necessary to repeat here the three grounds adequately set forth in DNC's petition justifying DNC's

1/ RNC's precise language is as follows:

"DNC's argument, as previously discussed (p.2) is based on its claim of a right of access over and beyond the Fairness Doctrine right of the public to be informed and runs counter to the statute and Commission and court decisions. Since DNC's claimed 'imbalance' is thus based upon a totally erroneous premise and has no legal significance, it cannot serve as the 'injury in fact' required to confer standing."



intervention in this matter (Pet., pp. 1-5). Nothing could dramatize more eloquently the grievous injury DNC has sustained than the fact that CBS has informed DNC that as a result of this Commission's order it is postponing indefinitely its "Loyal Opposition" programs.

Thus, unless the Commission acts and acts promptly to correct its plainly erroneous application of the fairness doctrine, RNC will have succeeded in its ultimate purpose: to still the voice of responsible dissent and opposition on the most powerful communications medium in our nation.

On August 28, 1970, RNC filed a Petition for Further Relief in which it asked the Commission to direct CBS to provide RNC with prime time by a date certain. DNC will not respond separately to that petition since the CBS opposition demonstrates that a grant of the relief requested therein would be untoward departure from the Commission's past treatment of fairness doctrine matters. DNC does wish to note, however, its belief that it would be totally inequitable for RNC to be afforded access between now and the November elections.<sup>1/</sup> Obviously, RNC hopes that its

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<sup>1/</sup> The fund solicitation announcements which were carried on a few stations following the July 7 broadcast have nothing to do with the fairness doctrine questions involved here. Those announcements were paid for at regular commercial rates. Under the Democratic National Committee and Zapple rulings, RNC can purchase spots in response to those run by DNC.

appearance would have an effect on the elections -- otherwise it would be satisfied to wait until this matter has been fully adjudicated. The DNC broadcast occurred two months ago and more than four months prior to the elections at a time when the identities of candidates for party nominations were not even known. RNC wants access, however -- thirty days prior to the election -- after the slates for the general elections have been selected. Fairness does not require -- indeed, it militates against -- the relief requested by RNC in this regard.


Conclusion

In view of the facts and arguments contained in DNC's Petition for Reconsideration and in view of RNC's utter failure to rebut a single point therein, DNC respectfully renews its request that the Commission promptly reconsider its August 18, 1970, opinion and order and dismiss the July 13, 1970, complaint of RNC.

Respectfully submitted,

DEMOCRATIC NATIONAL COMMITTEE

By

  
David H. Lloyd  
Irvin B. Nathan  
1229 19th Street, N.W.  
Washington, D.C. 20036  
Its Attorneys

Of Counsel:

Joseph A. Califano, Jr.  
General Counsel  
Democratic National Committee

September 8, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be deposited in the United States mail, postage prepaid, this 8th day of September 1970, copies of the foregoing Reply of the Democratic National Committee addressed to the following:

W. Theodore Pierson, Esq.  
Pierson, Ball & Dowd  
1000 Ring Building  
Washington, D.C. 20036  
Counsel for Republican National Committee

Robert V. Evans, Esq.  
Vice President and General Counsel  
Columbia Broadcasting System, Inc.  
51 West 52d Street  
New York, New York 10019

Wilmer, Cutler & Pickering  
900 17th Street, N.W.  
Washington, D.C. 20006  
Counsel for Columbia Broadcasting System, Inc.

*Miriam B. Vermillion*  
Miriam B. Vermillion

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Petition of )  
 )  
REPUBLICAN NATIONAL COMMITTEE )  
for Relief Against )  
 )  
COLUMBIA BROADCASTING SYSTEM, INC. )

To: The Commission

REPLY TO OPPOSITION OF REPUBLICAN  
NATIONAL COMMITTEE TO COLUMBIA  
BROADCASTING SYSTEM, INC. PETITION  
FOR RECONSIDERATION

This pleading is filed by Columbia Broadcasting System, Inc. (CBS) in reply to the Opposition of the Republican National Committee (RNC) to the Petition for Reconsideration filed by Columbia Broadcasting System, Inc. in the above-captioned proceeding.

In its Opposition, the RNC has failed to come to grips with the central arguments advanced in CBS' Petition for Reconsideration. It has been unable to demonstrate that the distinction between "party-oriented" and "issue-oriented" discussion, upon which the Commission's ruling in this case rests, is a rational or legally permissible one, or that it can be meaningfully applied in evaluating the content and character of broadcasts such as the July 7 O'Brien broadcast.

The RNC continues in its opposition to take the view that Mr. O'Brien simply did not discuss substantive

issues in the July 7 broadcast, and that the broadcast cannot therefore be characterized as a response to the President on those issues. The RNC's position, apparently, is that the broadcast was not issue-oriented because its approach was to contrast the promises of the Nixon Administration with its alleged failure to meet those promises on a number of issues rather than to "discuss" those issues.

This distinction is untenable. Mr. O'Brien's criticism of the Administration's alleged failures to solve the nation's economic problems or to reduce crime or to ensure equal rights for all Americans represented a discussion of those issues. Mr. O'Brien suggested specific alternative policies to those of the Administration in a number of the areas he discussed.

Since Mr. O'Brien devoted the July 7 broadcast to a discussion of issues of national importance, a conclusion that the broadcast was basically "party-oriented" can emerge only from a process of judging, on a line-by-line basis, whether particular comments on public issues are so tinged with partisanship as to cross the invisible line separating issue-oriented and party-oriented remarks, or whether the tone of the broadcast as a whole is such as to cross that line. Will reasonable men or reasonable licensees or, for that matter, reasonable Commissioners be able to agree as to when that line

is crossed? As discussed in greater detail below, to ask that these kinds of judgments be made is to assign to both licensees and the Commission a task that is as inappropriate as it is impractical. In a nation in which issues are characteristically defined and debated along partisan lines, the distinction between "issue-oriented" and "party-oriented" discussion is a meaningless one.

In any event, the character of Mr. O'Brien's response parallels that of the President's prior appearances. Mr. O'Brien is, of course, a partisan political figure; and when he comments on public issues, there is likely to be a "partisan" tone to his remarks and occasional outright partisan statements such as to the two cited by the RNC.<sup>\*/</sup> But, as demonstrated at length in our Petition for Reconsideration and not seriously contested by the RNC, the same partisanship is an inevitable accompaniment to the remarks of Congressional party leaders (as in the Republican response to the 1968 State of the Union Address) and of the President himself, who is chief spokesman for his party as well as chief of state.

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<sup>\*/</sup> The RNC has been able to single out only two remarks, at the end of the O'Brien broadcast, that can be said to refer to the Democratic Party in a context in which specific substantive issues are not being discussed. Surely two such remarks do not taint with a fatal "party-orientation" the remaining 98% of the broadcast, in which issues were discussed.

Mr. O'Brien's contrasting of the record of the Nixon Administration with the proposals of the Democratic Party and the actions of the Democratic-controlled Congress seems to us, qualitatively, no different from the instances in which the President has contrasted his Administration's record with that of his Democratic predecessors and criticized the performance of the Democratic-controlled Congress.\*/ The RNC's opposition reflects an interesting double standard in this regard: Mr. O'Brien's contrast of the Administration's performance with that of the Democratic-controlled Congress is party-oriented, but President Nixon's criticism of the Congress is not party-oriented because, after all, the Congress is made up of Republicans as well as Democrats. We wonder whether the RNC would also have characterized President Truman's crusade against the "do-nothing" 80th Congress (controlled by the Republicans) as similarly free of partisan overtones.

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\*/ See CBS Petition for Reconsideration, pp. 10-14. Compare, for example, the President's statement that "This Congress has the worst record in terms of appropriations bills of any Congress in history" with the following remarks of Mr. O'Brien:

"But it was Congress, not the President, that cut five-and-a-half billion dollars from the Pentagon budget. And when Congress tried to channel less than a quarter of that money into educational and health programs -- libraries, books, student loans -- the President responded with a nationally televised veto message."



The RNC dismisses as a "parade of horrors" CBS' argument that the July 7 broadcast cannot be meaningfully distinguished from broadcasts by other public officials identified with the opposition political party, and that the Commission's ruling therefore threatens to render nugatory the use of partisan responses to the President as a means of complying with fairness doctrine responsibilities and coping with any imbalance created by the increasingly extensive use of television by the President. The Commission's holding, states the RNC, was limited to the facts of this case. At the same time, however, the RNC does not even attempt to distinguish the contrary holding of the Commission in the 1968 Hays ruling,<sup>\*/</sup> in which a vigorous, highly "partisan" response by Republican Congressional leaders to President Johnson's State of the Union message was held not to give rise to any right of reply by a Democratic spokesman. Rather, the RNC's position is that the Hays case was wrongly decided, and that subsequent developments have made that clear.

In the first place, we do not see how the two subsequent developments cited -- the Supreme Court's decision in Red Lion<sup>\*\*/</sup> and the Commission's Zapple ruling<sup>\*\*\*/</sup> -- affect the validity of the Hays holding. The Red Lion case merely

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<sup>\*/</sup> Letter to Honorable Wayne L. Hays, Commission Reference No. 8330-S, C2-105 (1968).

<sup>\*\*/</sup> Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

<sup>\*\*\*/</sup> Letter to Nicholas Zapple, 23 F.C.C. 2d 707 (1970).



upheld the Commission's general fairness doctrine and its specific application in the personal attack and editorializing rules. The issues at stake in this case were simply not before the Court in Red Lion.

Moreover, as demonstrated in CBS' Petition for Reconsideration, the Zapple ruling is inapposite here, for several reasons. First, as discussed above, the leader of the other political party -- the President -- has already been afforded time to speak on the issues in question. Second, the O'Brien broadcast did not take place in an election campaign context, in which it is appropriate to focus more on whether candidates and their spokesmen have been equally treated than on whether all sides of issues have been given fair exposure. Finally, the July 7 broadcast resulted from an affirmative decision by CBS, exercising its responsibilities as a licensee, to redress the imbalance created by Presidential broadcasts by broadcasting views in answer to the President's; it was not a "gift" of time in response to a party request. For these same reasons, the Zapple ruling would not apply to the Hays situation and in no way undermines the Hays ruling.

Thus, not only has the RNC failed to distinguish the Hays ruling; it has failed to provide any basis for a

holding now by the Commission that the Hays ruling was incorrect.

The RNC's conclusion that the Hays case was wrongly decided only serves to support our contention that the Commission's ruling here cannot be limited to this particular broadcast, and that the ruling calls into question the use of any partisan spokesman to balance Presidential television exposure. If the RNC is correct, CBS and the other networks will be able to carry a response by Democratic Congressional leaders to next year's State of the Union address by President Nixon only if they are willing to carry, also, a reply to the Democratic response by a Republican spokesman. Such a governmentally-imposed right of reply-to-reply will lead to imbalance and will make it more difficult for licensees to respond meaningfully to the significant fairness problems posed by the President's extensive use of television.

The RNC suggests, as does the Commission's opinion, that the licensee's powers of "journalistic supervision" provide a meaningful way out of the dilemmas created by the ruling in this case. Under the Commission's holding, however, it is not enough for the licensee simply to ensure that the spokesman he selects sticks to the issues that the licensee determines appropriate for discussion and response to the President. Rather, the licensee must ensure that those issues are not

discussed in a way that is "party-oriented." Thus, the licensee can avoid the pitfalls of the Commission's ruling in this case only by reviewing beforehand the script of the selected spokesman, making judgments as to whether particular remarks or the overall impact is "party-oriented," and requiring the spokesman to make necessary changes (e.g., eliminating partisan remarks or modifying the tone of the entire program in a way satisfactory to the licensee).

We submit that it is highly undesirable for licensees to be placed in the position of having to judge whether remarks by responsible political leaders are party-oriented or issue-oriented, and having to require such leaders to adjust their remarks to avoid the reply-to-reply effect of the Commission's ruling in this case. Licensees should not be placed in the position of debating with public figures the question of what kind of language and tone they will employ.<sup>\*/</sup> In this delicate area, licensees may tend to err on the side of attempting to eliminate, wherever possible, vigorous criticism of the President, in order to avoid Commission review of their judgment and the possibility that they will be required to present a

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<sup>\*/</sup> Would it have been advisable or proper, for example, for CBS in 1968 to have required Representative Ford and the other Republican Congressional leaders quoted at pp. 17-19 of the CBS Petition for Reconsideration to revise their remarks to eliminate partisan criticism of President Johnson as a condition of broadcasting their reply to the State of the Union address?

reply to a reply that they feel is unnecessary. A Commission that has frequently expressed its commitment to the fostering of robust debate has promulgated in this case a ruling that can only have the effect of emasculating such debate.

It is equally inappropriate and undesirable for the Commission to be constantly reviewing the remarks of political figures and making judgments as to their "partisanship." An independent administrative agency simply should not be placed in the position of evaluating the "partisanship" of replies to the President in order to determine whether the President's party is entitled to a further reply to a reply.

Finally, we suggest not only that Hays was correctly decided and has not been overruled by Red Lion and Zapple, but also that any departure from the Hays ruling in this case would be plainly unlawful. The role to be assumed by the Commission under the ruling in this case and the effect its ruling will have in discouraging and burdening "partisan" or "party-oriented" responses to Presidential broadcasts are inconsistent with the First Amendment.\* / We have shown above

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\* / Even apart from the constitutional questions posed by the Commission's ruling, we suggest that the ruling exceeds the Commission's authority under the Communications Act to the extent that it expands the statutory requirement of equal opportunities beyond the carefully limited provisions of Section 315 of the Act. See the CBS Response to the Democratic National Committee Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations.

how the Commission's ruling would operate to discourage the presentation of vigorous partisan responses to the President.\*/  
Licensees would tend to avoid partisan replies, thus reducing the scope and extent of partisan debate. The discrimination against "party-oriented" speech as opposed to "issue-oriented" speech is self-evident. Any such discouragement of and burden on partisan speech violates the First Amendment, which embodies this nation's commitment to vigorous, even caustic public debate. New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

Quite apart from its future effects in discouraging broadcast of robust partisan debate, the immediate consequence of reaffirmance of the Commission's ruling would be to require any licensee who presents a vigorous partisan response to the President to create an imbalance in the discussion of major national issues. If, as a part of his overall presentation of controversial public issues, a licensee presents a discussion of some of those issues by the President and, in part, balances this with a partisan reply by a spokesman for the opposing

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\*/ Its inhibitory effect is clear -- not "speculative" as the Supreme Court found was the case with respect to the personal attack and political editorial rules in Red Lion, 395 U.S. at 393. While the Supreme Court in Red Lion suggested that, even were there an inhibitory effect, the Commission could eliminate any problem of inhibition by compelling licensees to broadcast controversial issue programming, no such alternative exists here. Since the fairness obligation can be satisfied by an "issue-oriented" broadcast, there would be no reasonable basis for the Commission to compel licensees to present partisan replies.

political party, the licensee would be forced to present a second spokesman from the President's own party. Thus, the Commission's ruling will have the effect of favoring the spokesmen of the party which holds the Presidency. Such imbalance by government edict is inconsistent both with the mandate of the Constitution and with our basic national traditions.

CONCLUSION

For the reasons stated herein and in our Petition for Reconsideration, the Commission's ruling on the RNC petition is arbitrary and capricious, beyond the Commission's statutory authority and inconsistent with the Constitution.

Oral argument was requested in our Petition for Reconsideration, and we respectfully reiterate that request. Such plenary consideration is surely warranted in view of the seriousness of the implications of this unprecedented ruling.

Respectfully submitted,

COLUMBIA BROADCASTING SYSTEM, INC.

By /s/ Robert V. Evans  
Robert V. Evans

Of Counsel:

Lloyd N. Cutler  
J. Roger Wollenberg  
Daniel Marcus  
Wilmer, Cutler & Pickering  
900 - 17th Street, N.W.  
Washington, D.C. 20006

/s/ Joseph DeFranco  
Joseph DeFranco

/s/ Eleanor S. Applewhaite  
Eleanor S. Applewhaite  
51 West 52 Street  
New York, New York 10019

September 14, 1970

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing  
Reply to Opposition of Republican National Committee to  
Columbia Broadcasting System, Inc. Petition for Reconsi-  
deration were hand delivered, this 14th day of September,  
1970, to the following:

W. Theodore Pierson, Esq.  
Pierson, Ball & Dowd  
1000 Ring Building  
Washington, D.C. 20036

Attorney for the Republican National Committee

David H. Lloyd, Esq.  
1229 - 19th Street, N.W.  
Washington, D.C. 20036

Attorney for the Democratic National Committee

  
\_\_\_\_\_  
Daniel Marcus



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 70-999  
52635

In re Petition of )  
 )  
REPUBLICAN NATIONAL COMMITTEE )  
for Relief Against )  
 )  
COLUMBIA BROADCASTING SYSTEM, INC. )

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 1970 ; Released: September 24, 1970

By the Commission: Commissioner Bartley dissenting and issuing a statement; Commissioner Johnson concurring in the result; Commissioner H. Rex Lee dissenting.

1. The Commission has under consideration two petitions for reconsideration of that portion of its fairness ruling, FCC 70-881, released August 18, 1970, which relates to the complaint of the Republican National Committee (RNC) against the Columbia Broadcasting System, Inc. (CBS). The petitions for reconsideration were filed by CBS and the Democratic National Committee (DNC). 1/ In addition, RNC has requested that CBS be directed to afford it response time prior to October 16 and to give twenty (20) days notice to RNC as to the time and length of the time to be allotted. 2/

2. In support of its request, CBS advances two major arguments: (a) that the Commission's decision cannot be justified under the traditional fairness doctrine rationale and is inconsistent therewith and, (b) that the new doctrine created in the RNC decision creates serious obstacles to the achievement of fairness on a continuing basis.

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1/ Other pleadings before the Commission include: Petition for Reconsideration filed by Democratic National Committee, August 20, 1970; Opposition filed by Republican National Committee, August 25, 1970; Reply filed by DNC, September 9, 1970; Petition for Reconsideration filed by CBS, September 3, 1970; Opposition filed by RNC, September 8, 1970; and Reply filed by CBS, September 14, 1970.

2/ Pleadings relating to this request are as follows: Petition for Further Relief filed by RNC on August 28, 1970; Opposition filed by CBS on September 4, 1970; and Reply filed by RNC on September 8, 1970.



3. CBS states that the July 7, 1970 twenty-five minute broadcast by the DNC was arranged against the background of extensive use of television by the President to state Administration policies on public issues. The RNC complaint, CBS notes, did not allege that CBS had failed to meet its fairness obligations in covering the substantive issues referred to by O'Brien (e.g., Indochina, crime, civil rights and the environment) and indeed, CBS asserts, the facts are otherwise. The RNC complaint did, however, allege that another issue -- the "which party should govern" issue -- was presented in the O'Brien broadcast and on this issue, a partisan issue, RNC must be given the opportunity to respond. CBS asserts that the "which party" issue was not in fact an element of O'Brien's presentation and the program was issue, not party, oriented. Thus, CBS contends, the Zapple ruling, 3/ which CBS would limit to an "election campaign context," is inapposite to the RNC complaint and the program in question represented an affirmative and reasonable judgment by the licensee as to the proper manner in which its fairness obligations on the issues involved were to be met. CBS argues that the application of the Zapple ruling to this case represents a dangerous departure from the fairness doctrine because it puts the Commission in the position of substituting its journalistic judgment for that of the licensee -- an ominous departure from past practice -- and would make it impossible for a licensee to meet the Commission's standard of "journalistic supervision" and still present those holding strong partisan views, including the President or the Chairman of the DNC. Moreover, the requirement of "journalistic supervision," CBS states, which the Commission required in Part E of its August 14, 1970 decision, is at odds with the requirement in Part C of the same document that "uninterrupted opportunity" be provided for appropriate opposition spokesmen to the President's Indochina war policies. 4/ In addition, CBS claims, the Commission's "party-oriented" rationale is inconsistent with a February 1968 letter to Representative Wayne Hays (No. 8330-S; C2-105) wherein it was held that CBS need not provide reply time to the Democratic leaders of Congress to respond to their

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3/ Letter to Nicholas Zapple, 23 FCC 2d 707 (1970). In the Zapple letter the Commission held, inter alia, that broadcast usage by a political party (as opposed to candidates) during an election campaign gives rise to a "quasi-equal opportunity" obligation whereby the opposing political party could not be refused time on the same basis.

4/ CBS also claims that the RNC decision was inconsistent with the denial of the Senator Dole complaint in the same document because there the Commission said the request was no more than an attempt to reargue the Administration's position which had already been presented.

5/ This was a letter of then Chairman Rosel H. Hyde to Rep. Hays.

Republican counterparts, who in turn had been given time to respond to a Democratic President's State of the Union speech.

4. CBS' second major argument -- that the Commission's decision will obstruct the achievement of fairness rather than facilitate it -- rests on the following assertions: Under the RNC decision, opposition party spokesmen will no longer be used to respond to the President because the balance thus achieved will be "immediately destroyed by the duty to present the President's views again through some other spokesman of his party." Moreover, CBS asserts, the RNC decision is based upon an isolated program -- a factor at odds with the fairness doctrine and engrafts "equal opportunities" onto a fairness issue. In sum, CBS urges, the RNC decision represents an improper "governmental intrusion on licensee responsibility in a sensitive area." CBS requests oral argument.

5. DNC's petition for reconsideration is based largely on the same contentions advanced by CBS 6/ and rests particularly upon the assertion that the July 7 DNC program must be evaluated in the context of the licensee's overall coverage of the issues. 7/ If such an evaluation were made, DNC argues, it would be seen that the President has addressed each of the issues covered and no issue was raised for the first time in the broadcast. DNC contends that the Commission erred in finding the July 7 broadcast to be "party" rather than "issue" oriented and in departing from traditional fairness considerations.

6. RNC opposes reconsideration on the grounds that the Commission was factually correct in concluding the DNC July 7 broadcast was "partisan rather than issue-oriented" and thus within the "political spokesman area" described in the Zapple letter. RNC also opines that the Hays ruling, relied upon by CBS, has been supplanted by subsequent clarification of the fairness doctrine in the Red Lion decision 8/ and the Zapple ruling and that the "journalistic supervision" required of

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6/ In view of this consideration, we need not treat the question of the standing of DNC as a party aggrieved to seek reconsideration or its failure to enter the proceeding at an earlier time.

7/ DNC claims that the following seven major issues were dealt with on the July 7 broadcast: state of economy; crime problem; civil rights for Blacks and other minorities; defense v. domestic spending; pollution; student dissent and national unity; and the war in Indochina.

8/ Red Lion Broadcasting Co., Inc. v. F.C.C., 395 U.S. 367 (1969).

CBS is not inconsistent with the Commission's requirement that an "uninterrupted opportunity" be provided opponents of the Administration's Indochina war policies, since the latter did not preclude the retention of proper control by the licensee to assure that the "uninterrupted opportunity" remained issue-oriented.

7. RNC's opposition to the DNC petition is predicated upon its assertions that the DNC argument for a "Loyal Opposition" response to the President reflects a reargument of the "right of access" concept which has been consistently rejected by the Commission. <sup>9/</sup> RNC states that the July 7 broadcast did raise a new issue -- the "which party should govern issue" -- and that this issue had not had a Republican response because the President is not a partisan spokesman as is the Chairman of a political party. Finally, RNC suggests, the discretion the licensee normally is afforded in choice of spokesman is not applicable in the Zapple political spokesmen area and the RNC or a partisan Republican spokesman must be given an opportunity to respond to the broadcast in question.

8. In its reply to RNC, CBS urges that RNC ". . . has been unable to demonstrate that the distinction between 'party-oriented' and 'issue-oriented' discussion, upon which the Commission's ruling in this case rests, is a rational or legally permissible one, or that it can be meaningfully applied in evaluating the content and character of broadcasts such as the July 7 O'Brien broadcast." It states that the ". . . RNC's position, apparently, is that the broadcast was not issue-oriented because its approach was to contrast the promises of the Nixon Administration with its alleged failure to meet those promises on a number of issues rather than to 'discuss' those issues." CBS then asserts that ". . . a conclusion that the broadcast was basically 'party-oriented' can emerge only from a process of judging, on a line-by-line basis, whether particular comments on public issues are so tinged with partisanship as to cross the invisible line separating issue-oriented and party-oriented remarks, or whether the tone of the broadcast as a whole is such as to cross that line." It argues that this is a wholly unreasonable and unworkable test which cannot be applied to broadcasts, including those of the President, which, CBS notes, are likely to contain a "partisan" tone and "occasional outright partisan statements". The Hays letter, it urges, is directly on point, has not been distinguished by RNC, and should be followed. <sup>10/</sup>

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<sup>9/</sup> Democratic National Committee, FCC 70-861, released August 12, 1970.

<sup>10/</sup> DNC, in its reply, reiterates its contention that the Commission has failed to apply the well-established principles of the fairness doctrine -- consideration of a licensee's overall performance -- to determine whether

(continued on next page)

9. In its request for further relief, RNC seeks a Commission action requiring CBS to provide RNC with an opportunity to respond to the July 7 broadcast on or before October 10, 1970, and requiring CBS to give RNC at least sixteen (16) days advanced notice of the exact date and time of such broadcast. 11/ In support of its request, RNC argues that CBS by pursuing its procedural rights -- i.e., seeking reconsideration of the Commission's order and court review if the Commission should decline to reverse Part E of its August 14, 1970 order -- could prolong final decision until after the November 1970 elections, thus rendering the relief granted RNC meaningless. The settling of a specific date for the granting of relief, RNC contends, will assure that review will be sought "with utmost expedition." CBS opposes the RNC request on grounds that the specificity sought by RNC is not customary in fairness doctrine cases because it is fundamentally inconsistent with the discretion afforded licensees in fulfilling their fairness obligation. CBS acknowledges the desirability of expedition in resolving the issues raised, and states its intention to "cooperate fully in expediting the appeal and in taking all other appropriate action to ensure that the matter will be finally resolved promptly." RNC in its reply reiterates its arguments that the relief sought is necessary to preserve RNC's rights and that consequently a specific date should be set for compliance with the Commission's order and the burden be shifted to CBS to obtain a stay, if it seeks judicial review.

10. We deny the petitions for reconsideration. However, since CBS says that our August 14th ruling was not "entirely clear" and since both CBS and DNC have misconstrued the ruling, it is desirable to set out again and at greater length the reasons for our holding and its precise nature.

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10/ (continued from preceeding page):

fairness obligations have been met on a given issue. In addition, DNC urges that it is not seeking to reargue the "right of access" question but rather seeks to question whether the single broadcast of July 7 could result in a violation of the fairness doctrine.

11/ RNC offers to reimburse CBS for the time granted if CBS should ultimately prevail in overturning the Commission's August 14, 1970 Order (Part E, FCC 70-881). RNC requests sixteen (16) days notice because that was the length of notice provided DNC by CBS prior to the July 7, 1970 broadcast.

11. First, both petitioners stress that we did not take into account the overall presentations of CBS on the issues covered in the July 7 DNC broadcast, and that our action did not follow the general fairness doctrine pattern. That is so, but we made clear, by our citation of the Zapple ruling and analysis, that this situation does not fall within the general fairness doctrine but rather, like personal attack or political editorializing, is controlled by a specific corollary of the doctrine. We can best point this up by analogy.

12. Suppose that during the election period -- say, October or November 1970 or 1972 -- CBS gave the DNC one-half hour in prime time to use as that organization wished, and the DNC understandably presented a program directed to several important election issues, showing how the Administration had fallen down on each and the Democratic Party's program on each better served the nation. If the RNC requested similar time, would CBS answer that the matter came within the general fairness doctrine -- that it, CBS, had presented Republican Party spokesmen in newscasts, news interview shows, news documentaries (something which it also had done, in roughly the same degree, with Democratic Party spokesmen)-- and that in particular the President during the last 18 months had several times addressed himself to these issues in news interviews or speeches and therefore the Republicans should not get two bites at the apple? <sup>12/</sup> The answer is clearly that CBS would not do so -- that if in an election period it gave a half-hour free time to the DNC to use as the latter wished, it would afford the RNC a similar period of free time for its unfettered use; if it sold DNC a half-hour, it would also sell RNC such an amount of time. For, as stated in our Zapple ruling, the fairness doctrine is applicable to these political party situations in a quasi-equal opportunities fashion.

13. Petitioners cannot, we believe, distinguish the present case from the above. The fact that the DNC broadcast occurred on July 7 rather than October 7 does not mean that the broadcast fell outside of the "political party" or Zapple ruling. While there are obviously heightened responsibilities in this area when within an election period (e.g., equal opportunities when candidates appear; fair treatment of

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<sup>12/</sup> Indeed, were CBS to adopt such a view and the equal opportunities clause of Section 315 to be repealed (e.g., S. 3637), CBS could present the Democratic Party candidate, and not accord time to the President (if a candidate for re-election) on the ground under general fairness, he had presented views on the issues during the last 18 or 24 months. Clearly CBS would not adopt such a view, but rather would accord substantially the same treatment to both major party candidates.



candidates or their spokesmen on exempt appearances -- see Section 315(a) "electioneering" is a continuing process (cf. DNC ruling, FCC 70-861, as to the need to allow time for political fund solicitations outside the election period). Stated differently, a licensee could not afford free time to one party to use as it wishes, relegate the other party to appearances on newscasts or other news-type shows (as stated, the party being afforded free time is also given fair coverage on these news-type programs), and claim fairness was being met as long as he stopped this pattern within a few months of the election.

14. The major contention made is that the DNC broadcast went to issues fully covered by RNC spokesmen and particularly by the President. As to the Republican Party spokesmen other than the President the short answer is that their appearances on news-type programs does not satisfy the fairness requirement in the "political party" situation raised by the DNC broadcast. See discussion, supra. 13/

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13/ In this respect, we wish to make clear that we do not accept the DNC contention that CBS has not fairly presented contrasting viewpoints to those of the Administration on several issues (pollution, crime, emergency housing legislation). DNC did not participate in the proceedings leading to the August 14th ruling here involved, and, in now coming before us on reconsideration, advances the above claim of unfairness without making the slightest showing in this respect. See Letter to Allen Phelps, 21 FCC 2d 12 (1969); Business Executives Move for Vietnam Peace, FCC 70-860. CBS has attached an exhibit here showing Republican Party spokesmen addressing themselves to issues here under consideration, and, in view of its undisputed claim of fair presentation on these issues could undoubtedly attach a similar exhibit showing extensive presentations by Democratic Party spokesmen on the issues; indeed, in connection with the Indochina war issue, CBS did show extensive presentations by both sides in newscasts, news interviews, news documentaries, and on-the-spot coverage of news events. Thus, on the showing before us, we find no unfairness as to the issues raised for the first time in the DNC petition for reconsideration.

15. We come now to the Presidential speeches -- the heart of the matter. CBS argues that the President has made extensive use of television to inform the nation on issues; that he was in no way confined as to the issues which he chose to cover in his speeches and some aspects of other appearances; that while the President is the Chief Executive, he is "also the unquestioned leader and spokesman of his party" (p. 9, CBS Pet.); and that therefore it was perfectly appropriate to afford time to the opposition party to use as it wishes, to give some balance to these numerous Presidential appearances.

16. However, Presidential appearances (other than as a candidate for re-election, when of course "equal opportunities" would be applicable, or, in the event of its repeal, fairness in the "political party" sense) do not come within the "political party" doctrine described above, and CBS does not contend that they do. Rather, it recognizes that "the President is the head of state and head of government"; that "as leader of all the American people, he is in one sense above party and politics, and this is reflected in the general tenor of his public remarks" (*ibid*). Thus, when the President delivers a veto message or informs the nation concerning his decision on Cambodia, he is not making an appearance within the "political party" doctrine.

17. Indeed, if he were, the networks would not clear simultaneous time for his nationwide presentation; further, under a contrary construction, it would mean that for every such appearance, a form of quasi-equal opportunities would be available to the opposition party. But see our ruling on Business Executives Move for Vietnam Peace, Part B, August 14, 1970.

18. This is not to say that the Presidential appearances do not constitute "a strong endorsement of Republican [Party] government" (p. 9, CBS Pet.). The President clearly does that, when he explains to the nation his course of action and why he believes it best serves the national interest. As we have stressed in our rulings, the fairness doctrine is fully applicable to these Presidential appearances, and reasonable opportunity must therefore be extended for the presentation of the contrasting viewpoints to those of the Administration. In short, it is the general fairness doctrine, and not the "political party" doctrine, which is applicable to these Presidential appearances.

19. Under that doctrine, CBS had and has wide discretion in its efforts to counterbalance the Presidential appearances. On any given issue -- even if not required to do so in view of its other coverage -- it could, if in its judgment it thought it appropriate, offer time to an opposition spokesman for a speech or a substantial insert in a news-type program, etc. On one issue -- the Indochina war -- CBS'

discretion was circumscribed. For, the Presidential speeches had largely focussed on this issue -- as shown by CBS' own showing in this respect (n. 22, August 14 ruling). It is for this reason that we held CBS (and the other networks) were required to afford a reasonable opportunity for the other side on this issue, geared specifically to the five addresses by the President. Part C, August 14 ruling.

20. We turn now to CBS' actions. CBS did not offer time to the DNC geared to the Presidential addresses on the Indochina war issue. CBS attacks the Commission's decision in this respect, saying that there was no need for it to confine the DNC broadcast to this issue. We think that our holding was a most logical one. CBS was apparently concerned about the extensive Presidential appearances and the resultant need to balance these appearances. Since these appearances had by far concentrated on the Indochina war issue -- indeed to the extent to require an offsetting speech appearance (Part C), and since the issue was one of great significance in view of the impending Senate debates, it would certainly seem that CBS -- concerned to have the public informed on the issues covered by the President -- would, first and foremost, turn to whatever appropriate spokesman it selected and offer him time to speak on Indochina. Other issues could then be specified.

21. But the matter does not turn on what issues CBS selected as the first to be covered. For, CBS did not specify any issues.<sup>14/</sup> It simply turned the time over to the DNC for whatever use it might want to make of it. However well-intentioned CBS was, the result here was simply the "political party" situation which we described at the outset.<sup>15/</sup> It was "party-oriented" rather than "issue-oriented," because of CBS' abstention in this critical area of issues to be covered.

22. The latter point is crucial. CBS makes the astonishing statement that the decision turned on a line-by-line judgment of whether the particular comments in the July 7 broadcast were so tinged with partisanship as to cross the line separating "issue-oriented and party-oriented remarks," (CBS Reply, p. 2), and that, in effect, it is being

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<sup>14/</sup> See, e.g., Exh. 2 of RNC Pet. (June 22, 1970) CBS wire to Chairman O'Brien ("...to offer the Democratic National Committee twenty-five minutes of free time on CBS television and radio networks, at 10:00 P.M. EDT July 7, for the presentation of the Committee's views").

<sup>15/</sup> While an incidental matter, we do note that the "party-oriented" nature of the program was aggravated by the DNC purchase of fund solicitation spots, to follow the program on many stations.



directed "to eliminate partisan overtones" (p. 15, CBS Pet.). We are at a loss to explain the basis for this argument. We made clear that CBS could select a partisan spokesman such as the DNC Chairman (para. 58); we have stressed that debate can be in the most partisan, robust, wide-open fashion. 16/ There is not the slightest question or suggestion of our judgment being based upon how "partisan" the remarks on public issues may be. The "licensee supervision" called for, if CBS wished to avoid the consequences of the "political party" doctrine, was as to what issue or issues were to be covered -- the same licensee supervision that is called for to carry out our ruling in Part C.

23. Indeed, the difference between CBS and the Commission on this aspect of the ruling is surprising, to say the least. The Commission has commended CBS for its concern in the area of informing the public on the issues covered by the Presidential addresses. It has agreed that CBS has wide discretion as to the spokesmen to be selected (including the DNC if it wishes) and that the presentation can be hard-hitting and partisan. The only difference is that if CBS wishes to avoid the "political party" doctrine in this type of situation (i.e., an RNC or DNC presentation), the Commission holds that CBS must exercise supervision over the issues to be covered. CBS, which is concerned about informing the public on the issues covered by the President and has long stressed to us that the licensee must retain control to insure fairness on the issues, is now urging to us that it must abdicate -- that it cannot specify that the spokesman direct himself, for example, first to the issue of the Indochina war, so stressed by the President and of such current significance at the time, and then to other issues to be delineated by CBS. 17/

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16/ That is the essential holding of Chairman Hyde's letter to Cong. Hays, Ref. No. 8330-S, C2-105. There CBS afforded time to several Republican Congressional leaders to answer President Johnson's State of the Union message, and the leaders understandably took issue with the President's view of the State of the Union, stating in most partisan terms that "the country was going to the dogs" under the Democrats (i.e., riots, crime, pornography). But this kind of rhetoric, which is directed to the "State of the Union" would appear germane to answer President Johnson's view of the country's posture, and, as stated, there is no basis for ruling out the most partisan, robust presentations. Significantly, Democratic Party spokesmen were given wide leeway in answering President Nixon's State of the Union address. Cong. Qtrly., Weekly Report, Vol. XXVIII No. 7, February 13, 1970., p. 430.

17/ We note, however, that CBS itself may have misgivings on this crucial matter (see n. 25, August 14 ruling).

24. Finally, we wish to make clear that nothing in the foregoing discussion is meant to indicate that the CBS program in question was in any way inconsistent with the public interest. It was a controversial issue program which contributes to an informed electorate and whose presentation was a matter solely within CBS' discretion. Our holding is simply that on the facts here presented, fairness, and specifically the "political party" corollary, required that RNC also be given a similar opportunity to inform the public.

25. We therefore deny the petition for reconsideration, and adhere to the ruling set forth in Part E, FCC 70-881.<sup>18/</sup> We also deny CBS' request for oral argument, since this would serve no useful purpose in light of the basis for our action and since there is a need for expeditious resolution of the matter (see para. 26, *infra*).

26. We turn now to the RNC request that the Commission require CBS to comply with the Commission's order by providing an opportunity during prime time on or before October 10, 1970, for RNC to respond to the DNC July 7 broadcast. RNC offers to reimburse CBS for the time, if on appeal CBS' position should be sustained. We recognize the need for expeditious disposition of these matters and indeed have expedited our own handling of this and related complaints. We are, however, reluctant to afford the relief requested by RNC, since it effectively cuts off CBS right of appeal -- a right which we have sought to protect in this sensitive area. For, if CBS is correct in its contention, RNC is not entitled to any time, and the matter thus does not turn simply on payment. In sum, we have sought to act expeditiously and would cooperate with the other parties in the most expeditious resolution of the matter, if there is an appeal. In this connection, we note CBS' assurance that it will cooperate fully in expediting prompt resolution of the matter. We do not believe it appropriate to go further. Therefore, we deny the RNC petition, but do expect prompt action on the matter. We expect CBS to report to the Commission its intention within a short period of time.

27. Accordingly, IT IS ORDERED, That the Petitions for Reconsideration filed by the Democratic National Committee and the Columbia Broadcasting System, Inc., on August 20, 1970, and September 4, 1970, respectively, ARE DENIED.

IT IS FURTHER ORDERED, That the Petition for Further Relief filed by the Republican National Committee on August 28, 1970, IS DENIED.

#### FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple  
Secretary

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<sup>18/</sup> We also adhere to the holding that CBS may take into account the consideration that the DNC broadcast did deal, for a few minutes, with the Indochina issue. We have directed CBS to afford uninterrupted time for a response to Presidential speeches on this issue (Part C). In this unusual circumstance, justification of events (our Order and the DNC broadcast) can be taken into account on the allocation of time to the RNC.

DISSENTING STATEMENT  
OF  
COMMISSIONER ROBERT T. BARTLEY

I dissent, as I did to the original order in this matter.

In my opinion, CBS acted reasonably and in good faith to discharge its licensee responsibility under the Fairness Doctrine as construed by long-established Commission policy and precedent cases.

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34-21  
SUPPLEMENTAL APPENDIX TO THE BRIEFS  
(Pages 144 through 191)

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals  
for the District of Columbia Circuit

FILED JAN 14 1971

COLUMBIA BROADCASTING SYSTEM, INC., )  
Petitioner, )

v. )

FEDERAL COMMUNICATIONS COMMISSION )  
and UNITED STATES OF AMERICA, )  
Respondents, )

DEMOCRATIC NATIONAL COMMITTEE, )  
REPUBLICAN NATIONAL COMMITTEE, )  
Intervenors. )

DEMOCRATIC NATIONAL COMMITTEE, )  
Petitioner, )

v. )

FEDERAL COMMUNICATIONS COMMISSION )  
and UNITED STATES OF AMERICA, )  
Respondents, )

REPUBLICAN NATIONAL COMMITTEE, )  
Intervenor. )

No. 24,655

No. 24,659

ON PETITIONS FOR REVIEW OF ORDERS OF THE  
FEDERAL COMMUNICATIONS COMMISSION

This volume contains legible copies of pages 144 through 191  
of the Appendix.

AVAILABLE

ound volume

## President Nixon

## Mr. O'Brien

### **I. Economy**

#### **A. Inflation and Recession**

Q. Inflation and rising prices, Mr. President, are of great concern. What specific plans do you have to curb them?

THE PRESIDENT. In the meeting of the Cabinet Committee on Economic Policy, which I set up, one of the three new institutions I set up—I say three new institutions—if I might digress for a moment, I suppose the Nation wonders what a President does in his first week and where is all the action that we have talked about. We have done a great deal, particularly in getting the machinery of government set up which will allow us to move in an orderly way on major problems.

I do not believe, for example, that policy should be made, and particularly foreign policy should be made, by off-the-cuff responses in press conferences, or any other kind of conferences. I think it should be made in an orderly way. So it is with economic policy. That is why, in addition to the Cabinet committee, in addition to the Urban Affairs Council and a revitalized National Security Council for foreign affairs, we now have a Cabinet Committee on Economic Policy.

That Cabinet committee has considered the problem of inflation, and the problem is, first, that we are concerned about the escalation of prices to a rate of 4.8 percent, and we do not see, if present policies continue, any substantial reduction in that.

And, second, we are considering what actions can be taken which will not cause an unacceptable rise in unemployment. By unacceptable rise in unemployment, I want to emphasize that we believe it is possible to control inflation without increasing unemployment in, certainly, any substantial way.

Regrettably, the President's expectations have not materialized, and, as so many of you are painfully aware, we have inflation and recession at the same time.

We call it Nixonomics: everything that is supposed to go up -- your income, productivity, housing construction, profits, the stock market -- is going down. Everything that is supposed to go down -- unemployment, interest rates, the cost of living -- is rising.

Every housewife is alarmed over the constant rises in food prices -- hot dogs up 14 cents a pound, hamburger up 12 cents a pound, potatoes up a third -- you know your grocery bill and how much it has gone up in the last year.

Do you know of a family earning less than \$13,000 annually that has been able to buy a home this past year? And even those able to borrow money for a new home know that a \$20,000 house costs an additional \$35,000 for interest charges alone -- the highest interest rates in 100 years.

In recent weeks Democrats and Republicans alike have been pleading with President Nixon to use the great powers of his office to stop this recession and inflation now, before more damage is done.

The President must use his great personal influence to roll back inflationary wage and price decisions, just as President Kennedy and President Johnson did on many occasions.

I. Economy

A. Inflation and Recession

I should make one further point. Unless we do control inflation, we will be confronted, eventually, with massive unemployment, because the history of economic affairs in other countries indicates that if inflation is allowed to get out of hand, eventually there has to be a bust and then unemployment comes. So what we are trying to do, without, shall we say, too much managing of the economy, is, we are going to have some fine tuning of our fiscal and monetary affairs in order to control inflation.

One other point I should make in this respect: I do not go along with the suggestion that inflation can be effectively controlled by exhorting labor and management and industry to follow certain guidelines. I think that is a very laudable objective for labor and management to follow. But I think I am aware of the fact that the leaders of labor and the leaders of management, much as they might personally want to do what is in the best interests of the Nation, have to be guided by the interests of the organizations that they represent.

So the primary responsibility for controlling inflation rests with the national administration, and its handling of fiscal and monetary affairs. That is why we will have some new approaches in this area. We assume that responsibility. We think we can meet it, that we can control inflation without an increase in unemployment.

**News Conference, Jan. 27, 1969**

Mr. O'Brien

Right now -- tonight -- Mr. Nixon could direct the lowering of interest rates on home mortgages, car loans, and the clothes you buy on credit from a department store.

A Democratic Congress gave him this power last year, but unfortunately, he has refused to use it.

I urge the President to act immediately. Please don't wait any longer for our economy to decline even further.

There is probably nothing of greater worry to the American family than the threat of unemployment. At a news conference two months ago a reporter asked the President about this problem.



President Nixon

Mr. O'Brien

I. Economy

A. Inflation and Recession

Q. I have the question against the backdrop of continually heading economy. Now with our tax package coming by on its way through Congress, are you giving any concern to doing something else—some new moves against the prices and the rising cost of living as they are reflected monthly in the Federal index?

THE PRESIDENT. Mr. Smith, it is true that we have rising prices, a rising cost of living, and also rising interest rates at 8 1/2 percent at the last report. However, in looking at a recent case, we find that there is usually a lead time of about 6 months from the time decisions are made on the economy for a real standpoint within Government and the effect of those decisions on it.

Now, this administration has made some decisions in cutting the budget, decisions in asking for an extension of the surtax, and we expect it to be extended, and other decisions which regard to tightening of credit. We believe that the decisions that we have made will begin to have effect within a matter of 2 to 3 months. If our projection proves to be wrong, then we will have to look to other courses of action, because we cannot allow prices to continue to go up, interest to go up, and the other factors which we have decided to continue.

News Conference, June 19, 1969

Q. Mr. President, sir, the small business people of this country are suffering and much more so now because of the high interest rates. I wonder if you have given any thought to organizing a Reconstruction Finance Corporation again?

THE PRESIDENT. I know that the high interest rates have caused great concern, particularly to the small business people.

I do not believe, however, that a new RFC would necessarily be the approach that would be effective to deal with it. I think the way to get at high interest rates is to get at the cause, as I answered the earlier question put by Mr. Smith. **News Conference, June 19, 1969**



I. Economy

A. Inflation and Recession

Q. Mr. President, on the subject of inflation, a number of economists have said that they do not believe the administration can take the steam out of the economy without exerting pressure on specific price increases, such as the auto increase, the steel price increase, and the others.

Are you considering taking such steps, or do you feel that the corner has already been turned in the battle on inflation?

THE PRESIDENT. I would take three steps if history told me they would work. I would point out, however, that the previous administration tried, through jawboning, as it is called, to put the blame on business for price increases; the blame on labor for wage increases.

In 1966, the guidelines died. They died because when Government, which is the primary agent for increasing prices, fails to do its job, Government asking labor and management to do theirs, it simply won't work. It is hypocritical, it is dishonest, but most important, it is ineffective, because since 1966, as you will note, 1966, 1967, 1968, despite all of the calling of the people to the White House, telling them to hold prices down, hold wages down, prices continued to escalate.

Now, we have attacked the source of the problem. We have cut the budget by \$7 billion. We have monetary restraints. We have asked for an extension of the surtax rather than its complete elimination. And these kind of policies, which go to the core of the problem, are beginning to work, as Mr. McGracken pointed out in his speech in Detroit on Monday.

Now that the Government has set the example, I believe that labor and management would be well advised to follow the example. I am not jawboning and telling them to reform themselves, when we refuse to reform ourselves. But I do say this: that labor and management labor that asks for exorbitant wage increases, management that raises prices too high, will be pricing themselves out of the market.

Anybody who bets on a continuing inflation will lose that bet, because our Government policies are beginning to work and we are going to stick to those policies until we cut the rise in the cost of living.

News Conference, Sept. 26, 1969

HARVEY KAYROW. Tell me, about the main problems you, yourself, have outlined in terms of priorities—Vietnam, inflation, cities, crime—are you on schedule in getting somewhere in solving them?

On the inflation front, we have had to take the hard medicine of cutting back on Government spending so that millions of people are going to be able to spend a little more and have more, have their dollars mean more, and we think on the crime area, really the problem is the Congress. The Congress has not given us the tools, but we are going to keep their feet to the fire until we get them.

Congressional Breakfast

November 5, 1969

President Nixon

I. Economy

A. Inflation and Recession

Now, I realize it is tempting to blame someone else for inflation.

Some blame business for raising prices.

Some blame unions for asking for more wages.

But a review of the stark fiscal facts of the 1960's clearly demonstrates where the primary blame for rising prices must be placed.

In the decade of the sixties the Federal Government spent \$57 billion more than it took in in taxes.

In that same decade the American people paid the bill for that deficit in price increases which raised the cost of living for the average family of four by \$260 per month in America.

Now millions of Americans are forced to go into debt today because the Federal Government decided to go into debt yesterday. We must balance our Federal budget so that American families will have a better chance to balance their family budgets.

Only with the cooperation of the Congress can we meet this highest priority objective of responsible government.

We are on the right track.

We had a balanced budget in 1959.

This administration cut more than \$7 billion out of spending plans in order to produce a surplus in 1970.

In spite of the fact that Congress reduced revenues by \$3 billion, I shall recommend a balanced budget for 1971.

**State of the Union Jan. 22, 1970**

Q. Mr. President, for several days I have been collecting some headlines that sort of point up the question I would like to put to you. I would like to run over some of these headlines with you.

"Balance of trade makes slight progress in 1969." "Circus rings up record 1969 profits." "Ringling Brothers, 'big firms, 1969 profits down.'" "Dow average hits new low for 3 years." "GNP rise halted." "Ford joins GM and Chrysler in work cutbacks." "Wholesale prices show sharp rise." "U.S. Steel will raise sheet prices February 1."

The question is, how, sir, do you assess the possibility that we may be in for perhaps the worst possible sort of economic condition—inflation and a recession?

Mr. O'Brien

The President. Well, Mr. Cornell, the major purpose of our economic policy since we came into office a year ago has been to stop the inflation which had been going on for 5 years without doing it so quickly that it brought on a recession.

Now, as a result, we are now in a position, the critical position, in which the decisions made in the next month or two will determine whether we win this battle.

In my view, the budget that we will announce on Monday, that I understand has received some attention already—but that budget will be a major blow in stopping the inflation psychology. Now, whether we can anticipate now whether we are going to have a recession, as some of those figures that you gave would imply, I would simply say that I do not expect a recession to occur.

Our policies have been planned to avoid a recession. I do expect that the present rate of inflation, which was less in the second half of 1969 than in the first half, will continue to decline and that we will be able to control inflation without recession.

**News Conference, Jan. 30, 1970**

President Nixon

Mr. O'Brien

## I. Economy

### A. Inflation and Recession

Q. Mr. President, would you tell us what you had in mind a few moments ago when you said that the decisions to be made in the next month or two would determine whether we have inflation or how we go on the road toward greater economic stability?

THE PRESIDENT. I think first we must put this in the context of the action of the Congress just a couple of days ago on the HEW veto.

I think the significance of that action—and I am not here to gloat over it because what we have to do now is to work together toward getting the right kind of bill that will be noninflationary—but the significance of that action, and it is a signal to the country, is that we are not going to have a runaway Congress and, therefore, not going to have a runaway budget and a runaway inflation.

Now, with this administration submitting a hard budget, not a bargain basement budget—I could have, by a little gimmickery, gotten this down to 199.8 rather than having it 200.7. But 200.8, which is the figure that we finally agreed upon, is a hard figure. It is an honest budget, we can keep it, and we have a surplus which is a real surplus.

Having made those decisions, this means that the Federal Reserve can now consider the fact that we do have fiscal restraint in determining whether or not this is the time to loosen up on monetary policy.

Let me be quite precise in this respect. The Federal Reserve is independent and the new Chairman who will be sworn in here tomorrow is one of the most independent men that I know.

As President of the United States, I am not saying what the Federal Reserve ought to do; I do know, though, that if monetary policy remains too restricted too long, we have a recession, and monetary policy will remain restricted unless the Federal Reserve and those who are in charge of monetary policy are convinced that fiscal policy is responsible. Fiscal policy is responsible and as a result of that I think the time is coming when monetary policy can be relaxed and that would lead to what I mentioned a moment ago.

News Conference, Jan. 30, 1970

11360 of June 30, 1967, No. 11497 of November 26, 1969, and constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations:

Section 1631.7, *Action by Local Board Upon Receipt of Notice of Call*, of Part 1631, *Quotas and Calls*, is amended by inserting immediately after the word "Provided" where it first appears in subsection (a) of that section the word "further" and by inserting immediately before such word "Provided" the following:

"Provided, That notwithstanding Part 1628 or any other provision of these regulations, when a registrant classified in Class I-A or Class I-A-O has refused or otherwise failed to comply with an order of his local board to report for and submit to an armed forces physical

examination, he may be selected and ordered to report for induction even though he has not been found acceptable for service in the Armed Forces and a Statement of Acceptability (DD Form 62) has not been mailed to him, and in such a case the armed forces physical examination shall be performed after he has reported for induction as ordered and he shall not be inducted until his acceptability has been satisfactorily determined:"

RICHARD NIXON

The White House  
June 16, 1970

[Filed with the Office of the Federal Register, 3:27 p  
June 16, 1970]

President Nixon

I. Economy

## ECONOMIC POLICY AND PRODUCTIVITY

*The President's Address to the Nation. June 17, 1970*

*Good afternoon, my fellow Americans:*

Today I would like to share with you my thoughts on three subjects that reach into the homes and the pocketbooks of every family: your job, your income, and your cost of living.

Specifically, I shall announce actions that will help to move us ahead more quickly towards our goal of full employment, economic growth, and reasonable price stability in peacetime.

Let us begin by recognizing these facts:

The American economy is the strongest in the world. This year, the number of Americans who have jobs is the highest in our history. Even allowing for taxes and inflation, the average real income of Americans is higher this year than ever before, in part because of the increase in social security benefits and the reduction of the tax surcharge, which will end entirely this month.

Because of that basic economic strength, we can honestly and confidently face up to our current problems.

Unemployment has increased; the price index continues to rise; profits have gone down; the stock market has declined; interest rates are too high.

Today I am presenting a program to deal with these problems.

First we should recognize the causes of our economic difficulties. What we are doing here is to deal with the problems of a nation in transition from a wartime economy to a peacetime economy.

Our economy must consequently make adjustments to two great changes at the same time.

One change is that defense spending is on the way down. For the first time in 20 years, the Federal Government is spending more on human resource programs than on national defense.

This year we are spending \$1.7 billion less on defense than we were a year ago; in the next year, we plan to spend \$5.2 billion less. This is more than a redirection of resources. This is an historic reordering of our national priorities.

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The cuts in defense spending mean a shift of job opportunities away from defense production to the kind of production that meets social needs. This will require adjustment by many employees and businesses.

For example, over 400,000 military and civilian employees have been released in this past year by our Armed Forces. In that time, cutbacks in defense spending have reduced jobs in defense plants by about 300,000. Taken together, that's almost three quarters of a million people affected by the reduction in defense spending. Now, while many of these workers have found new jobs, it is not hard to see where much of the current increase in total unemployment has come from.

Despite the difficulties of this transition, progress toward a peacetime economy is a good sign for the labor force and for the business community. Reduction in defense spending gives us more room in the Federal budget to meet human needs at home. It makes it possible to build a much more enduring prosperity in this country.

With its trials and with its hopes, a peacetime economy is clearly on the way. We have already brought home 115,000 from Vietnam. Our success in destroying enemy supply bases in Cambodia has made it possible for us to go forward with the program for withdrawal of 150,000 more men which I announced in my speech of April 20, without jeopardizing the lives of our men who would be brought home after that.

Our scheduled withdrawal of forces from Cambodia by June 30 will be kept. Our scheduled transition from a wartime economy to a peacetime consumer economy will be kept.

While our economy adapts to the reordering of our national priorities and resources, we are undergoing a second great change. We are trying to do something that never has been done before: to avoid a recession while we bring a major inflation to an end.

This administration took office after a long period in which this Nation lived far beyond its means. In the decade of the sixties, Federal deficits totaled \$57 billion, and the American consumer was forced to pay the piper in terms of a rising spiral of prices.

Seventeen months ago, when this administration took office, we stood at a crossroads of economic policy. There were actually four roads open to us. One was the road of runaway inflation—to do nothing about Government spending and rising prices, to let the boom go on booming—until the bubble burst. That was the road the Nation was taken on in the sixties, and the people who suffer most along that road are the millions of Americans living on fixed incomes.

The road headed in the opposite direction from that one was a possible choice as well: Let the economy "go through the wringer," as some suggested, and bring on a major recession.

Well, that would stop inflation abruptly, but at a cost in human terms of broken careers and broken lives that this Nation must never again have to pay.

A third choice was the route of wage and price controls. That would lead to rationing, black marketing, total Federal bureaucratic domination, and it would never get at the real causes of inflation.

That left a fourth choice: to cut down the sharp rise in Federal spending and to restrain the economy firmly and steadily. In that way, prices would slow their rise without too great a hardship on the working-



President Nixon

## I. Economy

Mr. O'Brien

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man, the businessman, and the investor. That was the road of responsibility, that is the road we chose, and that is the road we are continuing on today.

Because we are concerned with both prices and jobs, we have put the brakes on inflation carefully and steadily.

This did not mean that inflation could end without some slowdown in the economy. But we were willing to make a trade—to sacrifice speed in ending inflation in order to keep the economic slowdown moderate.

At the outset of our fight against inflation, we pointed out that it would take time to relieve the heavy spending programs and pressures on the economy; after that beginning, it would take more time to see that those reduced pressures result in a slowdown in price rises.

Now many people wonder why we are easing some of the restraints on the economy before we have seen dramatic results in slowing down the rise in the cost of living. Why, they ask, don't we keep on with all of our measures to hold down the economy until price rises stop completely?

Let me put it this way: It is a little like trying to bring a boat into a dock. You turn down the power well before you get to the dock and let the boat coast in. Now if you waited until you reached the dock to turn down the power, you'd soon have to buy a new dock or a new boat.

In the same way, we're heading for the dock of price stability: We have to ease up on the power of our restraint and let our momentum carry us safely into port.

That's why our independent central banking system has seen fit to ease up on the money supply. That is why I relaxed the cutback on federally-assisted construction projects and why I have not asked for a new surtax.

These actions are not a signal that we are giving up our fight against inflation. On the contrary, they mean that there was already enough power applied to reach the dock and now we'd better make sure that we don't damage the boat.

The Federal Reserve's monetary policy, which permitted no growth in the money supply at all in the second half of 1969, has now been relaxed. In the past 6 months, the money supply has grown at a rate of about 6 percent a year.

The Chairman of the Federal Reserve Board has assured the Nation that there will be enough money and credit to meet future needs, and that the orderly expansion of the economy will not be endangered by a lack of liquidity.

Now I'm not asking anyone to put on rose-colored glasses. We are well aware of the forces working against us.

To make sure the coming upturn in the economy will not be of the kind that brings on a new surge of inflation, we have gained control of the runaway momentum of Federal spending—the spending that triggered the rise in prices in the first place.

In the 3 years before this administration took office, Federal spending rose an average of 15 percent a year—the sharpest rate of increase since the Korean war. In the current fiscal year, we slashed that rate of increase in half, to 7 percent. And in the coming year, we intend to cut that rate of increase in spending by half again.

Now this required some hard decisions—including, as you may recall, the veto of a popular appropriations bill—but it was vital to win the

battle to hold down spending so that we could ultimately hold down prices. We are winning that battle but we cannot let up now.

I am convinced that the basic economic road we have taken is the right road, the responsible road, the road that will curb the cost of living and lead us to orderly expansion.

However, we have to face some difficult problems. The momentum of 4 years of inflation was stronger than had been anticipated. The effect on unemployment is greater than we foresaw. The pace of our progress toward price stability and high employment has not been quick enough.

Now this does not mean that we should abandon our strategy. It does mean that we must pay heed to economic developments as we move along and adjust our tactics accordingly.

While relying basically on continued moderation in general fiscal and monetary policies, I think it is necessary and timely to supplement them with several more specific measures.

Here are the actions I am taking to speed up the fight against inflation:

First, I shall appoint a National Commission on Productivity with representatives from business, labor, the public, and government.

In general, productivity is a measure of how well we use our resources; in particular, it means how much real value is produced by an hour of work. In the past 2 years, productivity has increased far less than usual.

In order to achieve price stability, healthy growth, and a rising standard of living, we must find ways of restoring growth to productivity.

This Commission's task will be to point the way toward this growth in 1970 and in the years ahead. I shall direct the Commission to give first priority to the problems we face now; we must achieve a balance between costs and productivity that will lead to more stable prices.

Productivity in the American economy depends on the effectiveness of management; the investment of capital for research, development, and advanced technology; and most of all on the training and progressive spirit of 86 million working Americans.

To give its efforts the proper base of understanding, the Commission will this summer bring together leaders of business, labor, government, and the general public to meet in a special President's Conference on Productivity.

Second, I have instructed the Council of Economic Advisers to prepare a periodic Inflation Alert. This will spotlight the significant areas of wage and price increases and objectively analyze their impact on the price level. This Inflation Alert will call attention to outstanding cases of price or wage increases and will be made public by the Productivity Commission.

Third, I am establishing a Regulations and Purchasing Review Board within the Federal Government. All Government actions will be reviewed to determine where Federal purchasing and regulations drive up costs and prices; our import policy will be reviewed to see how supplies can be increased to meet rising demand, without losing jobs here at home.

Now let me specifically spell out what I will do and what I will not do. I intend to help focus the attention of business and labor on the need for increased productivity. This is the way for them to serve their own interest while they serve the public interest. This is the only way to make

President Nixon

I. Economy

sure that increases in earnings are not wiped out by the rising cost of living.

This administration, by its spending restraint, has set the example in this past year; we believe we have now earned the credentials to call for similar restraint from business and labor to slow down inflation.

Now is the time for business at every level to take price actions more consistent with a stable cost of living, and now is the time for labor to structure its wage demands to better achieve a new stability of costs.

The fight against inflation is everybody's business. If you act against the national interest, if you contribute to inflation in your price or wage demands, then you are acting against your own best interests and your customers' best interests, and that is neither good business nor good bargaining.

If businessmen and workingmen are willing to raise their sights by lowering their demands, they will help themselves by helping to hold down everybody's cost of living.

I believe there is a new social responsibility growing up in our economic system on the part of unions and corporations. Now is the time for that social concern to take the form of specific action on the wage-price front.

Now, here is what I will not do:

I will not take this Nation down the road of wage and price controls, however politically expedient that may seem.

Controls and rationing may seem like an easy way out but they are really an easy way in to more trouble—to the explosion that follows when you try to clamp a lid on a rising head of steam without turning down the fire under the pot.

Wage and price controls only postpone a day of reckoning, and in so doing they rob every American of a very important part of his freedom.

Nor am I starting to use controls in disguise. By that I mean the kind of policy whereby Government makes executive pronouncements to enforce "guidelines" in an attempt to dictate specific prices and wages without authority of law.

Now I realize that there are some people who get satisfaction out of seeing an individual businessman or labor leader called on the carpet and browbeaten by Government officials. But we cannot protect the value of the dollar by passing the buck. That sort of grandstanding distracts attention from the real cause of inflation and it can be a dangerous misuse of the power of Government.

The actions I have outlined today are well within the powers of the President. But there are other actions that the President cannot take alone.

This is not the time for the Congress to play politics with inflation by passing legislation granting the President standby powers to impose wage and price controls. The Congress knows I will not impose controls because they would do more harm than good.

This is the time, however, for Congress and the President to cooperate on a program specifically addressed to help the people who need help most in a period of economic transition from a wartime to a peacetime economy.

Mr. O'Brien

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Now here is that program:

To provide more help now to those workers who have lost jobs, I urge the Congress to pass the legislation I have proposed to expand and strengthen our unemployment insurance system. This legislation would cover almost 5 million more people who lack this protection now, and the system would be made more responsive to changing economic conditions.

I submitted this legislation to the Congress almost a year ago. It is time for the Congress to act.

To help those in need of job training, I urge the Congress to pass the Manpower Training Act which provides an automatic increase in manpower training funds in times of high unemployment. I submitted this proposal to the Congress 10 months ago. It is time for the Congress to act.

I ask for full appropriation for the Office of Economic Opportunity and I request the Congress to provide at once a supplemental budget of \$50 million to provide useful training and support to young people who are out of school in the summer months.

To further protect the small investor, I support the establishment of an insurance corporation with a Federal backstop to guarantee the investor against losses that could be caused by financial difficulties of brokerage houses. While this would not affect the equity risk that is always present in stock market investment, it will assure the investor that the stability of the securities industry itself does not become cause for concern.

To relieve the worries of many of our older citizens living on fixed incomes, I urge the Congress to pass my proposal to tie social security benefits to the cost of living. This proposal, passed by the House, awaiting Senate action for the past month, will keep the burden of the fight against inflation from falling on those least able to afford it.

To stimulate an industry bearing the brunt of high interest rates, I urge enactment of the Emergency Home Finance Act of 1970. This would attract as much as \$6 billion into the housing market in the coming fiscal year. More than a third of a million families need this legislation for home financing now; and the resulting new construction of more than 200,000 houses will also help provide many new jobs.

This housing bill was passed unanimously by the Senate. It has been awaiting action for 3 months in the House. It is time for the Congress to act.

To help the small businessman who finds it difficult to get necessary credit, I have asked the Congress for greater authority for the Small Business Administration to stimulate banks and others to make loans to small businesses at lower interest rates. I submitted this legislation to the Congress 3 months ago. It is time for the Congress to act.

To strengthen our railroad industry, I am asking for legislation that will enable the Department of Transportation to provide emergency assistance to railroads in financial difficulties. I am also urging the independent Interstate Commerce Commission to give prompt attention to the urgent financial problems of this industry.

And finally, to curb inflationary pressures throughout our economy, I call upon the Congress to join me in holding down Government spending to avoid a large budget deficit. This requires a new restraint on

spending programs and the passage of the revenue-producing measures that I have already made.

There is an old and cynical adage that says that in an election year, the smart politician is one who votes for all bills to spend money and votes against all bills to raise taxes.

But in this election year of 1970, that old adage cannot apply. The American people will see through any attempt by anyone to play politics with their cost of living. And whenever a Member of Congress displays the imagination to introduce a bill that calls for more spending, let him display the courage to introduce a bill to raise the taxes to pay for that new program.

Long before the art of economics had a name, it was called "political arithmetic." The American people expect their elected officials to do their political arithmetic honestly.

The actions I have taken today, together with the proposals I have made, are needed now to help us through this time of transition.

I believe this is the right program at the right time and for the right purpose. There is no more important goal than to curb inflation without permitting severe disruption. This is an activist administration, and should new developments call for new action in the future, I shall take the action needed to attain that goal.

Before I close today, I would like to give you a broader view of the significance of what is happening in the American economy.

We have more at stake here than a possible difference of one or two tenths of a percentage point in the price level in 1970. All of us have to make decisions now which will profoundly affect the survival of a free economic system throughout the world.

Industrial countries around the world all face the problems of inflation. By solving our problems here without throwing away our freedom, we shall set an example that will have great impact on the kind of economic systems others may choose.

Our free economic system has produced enormous benefits for the American people. The United States, with 10 percent of the free world's people, produces 40 percent of the free world's output. We did not gain that production power by shackling our free economic system.

The average American has the highest real disposable income in the world, and it is higher today than ever before in our history. We did not reach that height by turning over economic freedom to government.

In the next 5 years, and in real terms, the American consumer will be able to buy almost 20 percent more than he does today. To reach that attainable goal, we need no artificial dependence on the production of the weapons of war—on the contrary, we will all share much more fully in a peacetime prosperity.

As I see it, prosperity is not a period of good times between periods of hard times—that's false prosperity, with people riding high but riding for a fall.

Nor is prosperity a time when the well-to-do become better off while everyone else stays the same or falls behind—that's partial prosperity. It only widens the gap between our people.

The true prosperity that I envision offers a new fairness in our national life.

MONDAY, JUNE 22, 1970

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President Nixon

I. Economy

We are working toward a system that will provide "job justice"—open and equal opportunity for every man and woman to build a good career.

We are working toward a system that replaces the old ups and downs with a new steadiness of economic growth within our capacity to produce efficiently.

And we are working toward a system that will deliver a higher standard of living to a people living in peace.

That is the hope offered by a modern free enterprise system—not managed by government and not ignored by government, but helped by a government that creates the climate for steady, healthy growth.

As we move forward into a peacetime economy, I am confident that we will achieve the only kind of prosperity that counts—the prosperity that lasts, the prosperity that can be shared by every American.

Thank you and good afternoon.

NOTE: The President spoke at 12 noon in his office at the White House. His remarks were broadcast on radio and television.

Mr. O'Brien

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## President Nixon

### I. Economy

#### B. Unemployment

Q. Mr. President, on a domestic subject, the economy, sir. Unemployment is up, the stock market is down, things look generally discouraging. Do you have any views on that, and do you have any plans?

THE PRESIDENT. Yes. Unemployment reached the point of 4.8, I noticed, this last month. In order to keep it in perspective, it should be noted that in 1961, 1962, 1963, 1964, and 1965 the average unemployment was 5.7. 5.7 is too high. 4.8, I think, is also too high. But the unemployment we presently have is the result of the cooling of the economy and our fight against inflation.

We believe, however, that, as we look to the balance of the year, that we will begin to see a moving up in our gross national product in the last of the second quarter and throughout the third and fourth quarters. I believe that by the end of the year we will have passed the trillion dollar mark in terms of GNP. I believe that the year 1970 will be a good year economically, a year in which unemployment, we hope, can be kept below the average that we had in the early sixties, which was much too high.

#### News Conference, May 8, 1970

However, we have to face some difficult problems. The momentum of 4 years of inflation was stronger than had been anticipated. The effect on unemployment is greater than we foresaw. The pace of our progress toward price stability and high employment has not been quick enough.

#### Address on Economics, June 17, 1970

## Mr. O'Brien

As the President said, it is partly a matter of perspective that 5.7 percent unemployment rate mentioned in the early 1960s reflected a steadily declining rate of unemployment, a decline from the high of 7 percent which President Kennedy inherited from the Eisenhower-Nixon Administration of the 1950s.

The fact is that unemployment fell during the 1960s and it was down to 3.3 percent in December, 1968. It has climbed steadily since President Nixon took office. Since last December, we have experienced the fastest five-month rise in unemployment since the recession in the late 1950s. But beyond this, instead of talking statistics and percentages, let's remember that more than four million seven hundred thousand Americans are out of work tonight.

Let's look at another major concern and see what candidate Nixon promised -- and what has happened since he took office.

## President Nixon

### II. Crime

Q. Mr. President, you talked quite a bit during the campaign about crime in the District of Columbia. We have had quite a bit of it since January 1st, and I wondered how you proposed to deal with it.

THE PRESIDENT. Mr. Healy, it is a major problem in the District of Columbia, as I found when I suggested to the Secret Service I would like to take a walk yesterday. I had read Mary McGrory's column and wanted to try her cheesecake. But I find, of course, that taking a walk here in the District of Columbia, and particularly in the evening hours, is now a very serious problem, as it is in some other major cities.

One of the employees at the White House, just over the weekend, was the victim of a purse snatching, which brings it very close to home.

Incidentally, I might point out in that case that my advisers tell me that by seeing that the area is better lighted, that perhaps the possibility of purse snatching and other crimes in the vicinity of the White House might be reduced. Therefore, we have turned on the lights in all of that area, I can assure you. [Laughter]

But to be quite specific with regard to the District of Columbia, it was not only a major commitment in the campaign; it is a major concern in the country. I noted

an editorial in one of the major papers, the New York Times, for example, that Washington, D.C. was now a city of "fear and crime." That may go too far, but at least that was their judgment. All three of the Washington papers indicate great concern.

Consequently, I have on an urgent basis instructed the Attorney General to present to me a program to deal with crime in the District of Columbia, and an announcement of that program and also an announcement as to what we will ask the Congress to do, in addition to what we will do administratively, will be made at the end of this week.

**News Conference, Jan. 27, 1969**

## Mr. O'Brien

BARBARA WALTERS. Mr. President, here with your congressional supporters, I wonder if you can comment on how you feel you have fared in general with Congress, what your greatest success is and perhaps what your biggest disappointment has been with them.

Now when you get to the domestic issues, the crime package that Herb referred to, and the inflation package, and the tax bill, and the rest, it is a little harder, but that is the way the game is played. But I am going to fight just as hard as I can here, because this Nation wants this Congress to get to work and give us the tools to deal with narcotics, and deal with crime, to deal with all of these problems. We cannot do it until we get this legislation passed.

### **Congressional Breakfast November 5, 1969**

Of course every new President has the power to appoint his own Attorney General, but what has been the record of the Attorney General President Nixon appointed?

Eighteen months have passed. The crime rate in this country has not gone down. In the first three months of this year it rose 15 percent over the same period last year. And it is especially alarming that the fastest rates of increase are now in the suburbs and in rural areas of our country.

The way to stop rising crime is not to blame others, such as Congress. The way to stop the rising crime rate is to help local and state law enforcement agencies who carry the major burden.



## II. Crime

In referring to budget cuts, there is one area where I have ordered an increase rather than a cut—that is the requests of those agencies with the responsibilities for law enforcement.

We have heard a great deal of overblown rhetoric during the sixties in which the word "war" has perhaps too often been used—the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word "war" is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives.

We have a tragic example of this problem in the Nation's Capital, for whose safety the Congress and the Executive have the primary responsibility. I doubt if many Members of this Congress who live more than a few blocks from here would dare leave their cars in the Capitol garage and walk home alone tonight.

Last year this administration sent to the Congress thirteen separate pieces of legislation dealing with organized crime, pornography, street crime, narcotics, crime in the District of Columbia.

None of these bills has reached my desk for signature.

I am confident that the Congress will act now to adopt the legislation I placed before you last year. We in the Executive have done everything we can under existing law, but new and stronger weapons are needed in that fight.

While it is true that State and local law enforcement agencies are the cutting edge in the effort to eliminate street crime, burglaries, murder, my proposals to you have embodied my belief that the Federal Government should play a greater role in working in partnership with these agencies.

That is why 1971 Federal spending for local law enforcement will double that budgeted for 1970.

The primary responsibility for crimes that affect individuals is with local and State rather than with Federal Government. But in the field of organized crime, narcotics, pornography, the Federal Government has a special responsibility it should fulfill. And we should make Washington, D.C., where we have the primary responsibility, an example to the Nation and the world of respect for law rather than lawlessness.

That's how the President addressed the crime problem in his State of the Union Message last January. What action has followed those farsighted words?

The facts are that the Nixon Administration budget requires one thousand dollars from every one of you -- every American -- to run the government. Of that one thousand dollars, the Administration has earmarked only \$2.40 to assist state and local governments in the fight against crime -- cutting the Democratic program in half.

And, while I am sure the President and the Attorney General want to reduce crime, I cannot understand why they have refused to support further improvements in the Safe Streets Act advocated by a Democratic President and enacted by a Democratic Congress in 1968 -- our major federal anti-crime program. They are improvements that would give cities with the greatest crime problems the most help.

I regret that so many of the top law enforcement experts brought to Washington by the Nixon Administration last year have now resigned, because, as they said, Attorney General Mitchell has refused to do what must be done to control the growing crime rate in America.

III. Civil Rights for Blacks and Other Minorities

No man can be fully free while his neighbor is not. To go forward at all is to go forward together.

This means black and white together, as one nation, not two. The laws have caught up with our conscience. What remains is to give life to what is in the law: to insure at last that as all are born equal in dignity before God, all are born equal in dignity before man.

**Inaugural Address, Jan. 20, 1969**

One of the biggest disappointments of the first 18 months of the Nixon Administration has been precisely this failure to match its words with deeds -- to provide new opportunities for minority citizens, opportunities that must ultimately benefit all Americans.

Again, a number of experts brought to Washington by the Nixon Administration have resigned. They recognized this performance gap.

The failure to define clearly the policy for school desegregation has led to confusion in local school systems, and growing resentment and discouragement by families seeking equal educational opportunities for their children.

Above all, in the past 18 months we have been denied the strong moral leadership on this issue which only the White House can provide -- that is must provide. We have lacked a President speaking forthrightly about the moral rightness of making the guarantees of the Constitution a reality for every American.

Again, Congress has had to take the lead -- in overcoming the Administration's obstacles to renewing the Voting Rights Act, a law that provides all Americans with the most basic of democratic rights as well as extending the right to vote to 18-year-olds.

The times call for a new vision of our priorities. The President seemed to understand this when he addressed the nation last month.

Q. Mr. President, there has been conflicting speculation about the extent to which your administration will seek to advance school desegregation. Could you tell us what your policy will be on that, specifically including the so-called "freedom of choice" plan?

THE PRESIDENT: That was a subject, as you will recall from having covered me in the campaign, that I addressed myself to on several occasions.

First, as far as freedom of choice is concerned, freedom of choice must be defined in terms of what it does. If freedom of choice is found to be simply a subterfuge to perpetuate segregation, then funds should be denied to such a school system. If a freedom of choice plan, however, is found to be one which actually is bringing an end to segregation, then a freedom of choice plan, in my opinion, is appropriate and should receive funds.

As far as school segregation is concerned, I support the law of the land. I believe that funds should be denied to those districts that continue to perpetuate segregation. I think that what we have here is a very difficult problem, however, in implementing it. One is our desire, a desire that was emphasized by Dr. Allen, to keep our schools open, because education must receive the highest priority. The other is our desire to see to it that our schools are not segregated.

That is why I have, in discussing this with Secretary Finch and with Dr. Allen, urged that before we use the ultimate weapon of denying funds and closing a school, let's exhaust every other possibility to see that local school districts do comply with the law.

**News Conference, Feb. 6, 1969**



President Nixon

Mr. O'Brien

### III. Civil Rights for Blacks and Other Minorities

Q. Mr. President, do you agree with those who say that you and your administration have a serious problem with distrust among the blacks, and whether you agree that it is one of your more serious problems or not, could you tell us specifically what you are doing to deal with what some consider to be this distrust among the blacks?

THE PRESIDENT. I am concerned about this problem; and incidentally, let me make it very clear that those who have raised this question are not simply those who are political opponents. My Task Force on Education pointed up that I was not considered—I think the words they used—as a friend by many of our black citizens in America.

I can only say that, by my actions as President, I hope to rectify that. I hope that by what we do in terms of dealing with the problems of all Americans, it will be made clear that the President of the United States, as an elected official, has no State constituency. He has no congressional constituency. He does not represent any special group. He represents all the people. He is the friend of all the people.

Putting it another way—as a lawyer—the President is the counsel for all the people of this country, and I hope that I can gain the respect and I hope eventually the friendship of black citizens and other Americans.

#### News Conference, Feb. 6, 1969

Q. Mr. President, in staffing your administration, you have so far made about 200 high-level Cabinet and other policy position appointments, and of these only three have gone to women. Could you tell us, sir, whether we can expect a more equitable recognition of women's abilities, or are we going to remain a lost sex?

THE PRESIDENT. Would you be interested in coming into the Government? *[Laughter.]*

Very seriously, I had not known that only three had gone to women, and I shall see that we correct that imbalance very promptly.

#### News Conference, Feb. 6, 1969

Mr. O'Brien

President Nixon

### III. Civil Rights for Blacks and Other Minorities

Q. Mr. President, sir, many civil rights groups are saying that your policy on school desegregation amounts to a retreat from the Supreme Court decision of 15 years ago. Some even say this amounts to an effort to build a party base for the Republicans in the South.

Where do you stand on school segregation and how much more time do you think districts that haven't complied ought to have?

THE PRESIDENT. This is a very difficult problem. I would say first that we have had a lot of criticism from the South insofar as our integration and desegregation policies are concerned, as well as from the groups to which you refer.

It seems to me that there are two extreme groups. There are those who want instant integration and those who want segregation forever. I believe that we need to have a middle course between those two extremes. That is the course on which we are embarked. I think it is correct.

As I evaluate the situation this year, I found that there are twice as many schools that are desegregated at the opening of this term as was the case at the opening of the term a year ago. I think that is progress.

Now one other point that should be made. I do not consider that it is a victory for integration when the Federal Government cuts off funds for a school and thereby for both black and white students in that school, denies them the education they should have. That is not a victory for anybody. It is a defeat for education.

I believe, therefore, that that particular device should be used as we currently are using it: only when it is absolutely necessary for the purpose of achieving our objective of desegregated education. We are for it, but we are going to avoid both extremes.

**News Conference, Sept. 26, 1969**

III. Civil Rights for Blacks and Other Minorities

Q. Going back to your response to the school desegregation question, it is now 15 years since the Supreme Court made its decision. How much longer do you think school segregation should be allowed to exist anywhere in the country?

THE PRESIDENT. Only as long as is absolutely necessary to achieve two goals--to achieve the goal of desegregated schools without, at the same time, irreparably damaging the goal of education now for the hundreds of thousands of black and white students who otherwise would be harmed if the move toward desegregation closes their schools.

Q. Mr. President, in connection with the school desegregation, one of the most controversial cases has been the action that the Government took in Mississippi in deciding to ask for a further postponement of some of the school integration there.

There have been published reports that Senator John Stennis of Mississippi informed the administration that if the school integration went through there, he might not be able to handle the administration's defense bill, and that you, yourself, made the decision.

Would you tell us whether these reports are true, whether Senator Stennis did so inform the administration, and your connection, if any, with this Mississippi case?

THE PRESIDENT. Senator Stennis did speak to me, along with several other representatives from Mississippi, with regard to his concern on this problem. But anybody who knows Senator Stennis and anybody who knows me would know that he would be the last person to say, "Look, if you don't do what I want in Mississippi, I am not going to do what is best for this country."

, News Conference, Sept. 26, 1969

Mr. O'Brien

President Nixon

### III. Civil Rights for Blacks and Other Minorities

Q. Mr. President, yesterday in Chicago, your Assistant Secretary of Labor, Mr. Fletcher, tried to hold some hearings about getting more blacks into the construction unions, and he was prevented from doing so.

I wonder if you could tell us, first of all, your reaction to that specific situation in Chicago, and, secondly, your general feeling about getting more blacks into the trade unions.

THE PRESIDENT. Relating first to the second part of the question, it is essential that black Americans, all Americans, have an equal opportunity to get into the construction unions. There is a shortage in construction workers.

The interest of the Nation requires this, apart from the matters of simple justice which are involved.

Second, in this respect, we have, as you know, the Philadelphia Plan. We have had our problems in Pittsburgh which are presently being discussed through our mediation, at least discussed, although it is still a very volatile situation. And now, of course, we have the problem in Chicago.

We intend to continue through the Department of Labor to attempt to make progress in this field, because in the long run, we cannot have construction unions which deny the right of all Americans to have those positions.

America needs more construction workers, and, of course, all Americans are entitled to an equal right to be a member of a union.

**News Conference, Sept. 26, 1969**

Q. Before the Supreme Court ordered immediate school integration, you said you preferred a middle road policy, that is between segregation forever and instant integration.

What is your policy now?

THE PRESIDENT. To carry out what the Supreme Court has laid down. I believe in carrying out the law even though I may have disagreed as I did in this instance with the decree that the Supreme Court eventually came down with. But we will carry out the law.

though I may have disagreed as I did in this instance with the decree that the Supreme Court eventually came down with. But we will carry out the law.

**News Conference, Dec. 8, 1969**

Third, we must adopt reforms which will expand the range of opportunities for all Americans. We can fulfill the American dream only when each person has a fair chance to fulfill his own dreams. This means equal voting rights, equal employment opportunity, and new opportunities for expanded ownership. Because in order to be secure in their human rights, people need access to property rights.

**State of the Union Message**

**January 22, 1970**

Q. Mr. President, how do you feel you stand, now that you have been in office a year, in terms of having the confidence and trust of the black people in this country?

THE PRESIDENT. I have been concerned, Mr. Kaplow, about polls and statements by some black leaders and some white leaders who purport to speak for black people, to the effect that while the administration seems to be doing rather well among most of the American people, that we do not have the confidence that we should have among black people.

III. Civil Rights for Blacks and Other Minorities

Let me, however, respond to what I intend to do about that in this way: I think the problem we confronted when we came in was a performance gap with regard to black people in America-- big promises and little action and, as a result, immense frustration which flared into violence.

Now I know all the words. I know all the gimmicks and the phrases that would win the applause of black audiences and professional civil rights leaders. I am not going to use them. I am interested in deeds. I am interested in closing the performance gap. If we can get our welfare reform, if we can stop the rise of crime which terrorizes those who live in our central cities, if we can move on the programs that I mentioned with regard to rural America where 52 percent of the black people live, if we can provide the job opportunity and the opportunity for business enterprise for black people and other minority groups that this administration stands for, then when I finish office I would rather be measured by my deeds than all of the fancy speeches I may have made. I think then that black people may approve what we did. I don't think I am going to win them with the words.

**News Conference, Jan. 30, 1970**

## President Nixon

Mr. O'Brien

### IV. Defense Spending Versus Domestic Spending

Q. Mr. President, do you support Dr. Allen's statement of yesterday that he believes massive aid to urban schools is necessary?

THE PRESIDENT: Well, I support the proposition that there needs to be a massive infusion of assistance to education. Let me make one thing very clear in that respect, so that you can get my thinking directly. You will note yesterday that I supported a \$10 million increase in the funds for the National Science Foundation, which will go to higher education.

I believe higher education needs more assistance, too. But at the present time the great need is in the area described by educators of "K through 12," kindergarten through the 12th grade—preparing students in these years for the higher education which is now available to virtually every student who is capable of meeting the standards for getting into college.

As far as Dr. Allen's method of doing so, I do not believe that he, sophisticated as he is as the superintendent of a State school system, would suggest that we go around the States. We cannot do that because the cities and the school systems within a State cannot exist without the State government.

However, the area of need is primarily in the city school systems. We will try to meet that problem as best we can.

#### News Conference, Feb. 6, 1969

Q. Mr. President, your safeguard ABAM system, I understand, would cost about \$1 billion less in the coming fiscal year than the plan which President Johnson sent up. Will this give you the opportunity to reduce the surcharge or will the continued high level of taxation be needed for the economy?

THE PRESIDENT: That question will be answered when we see the entire budget. Secretary Laird will testify on the defense budget on Wednesday.

Incidentally, my understanding at this time, and I have seen the preliminary figures, is that the defense budget that Secretary Laird will present will be approximately \$2½ billion less than that submitted by the previous administration.

The President says he favors this change in our priorities. But it was Congress, not the President, that cut five-and-a-half billion dollars from the Pentagon budget. And when Congress tried to channel less than a quarter of that money into educational and health programs libraries, books, student loans -- the President responded with a nationally televised veto message.

In that same week when Mr. Nixon vetoed the education and health bill as inflationary, he announced a new multibillion dollar spiral in the nuclear arms race. Why wasn't this just as inflationary, if not more so?

Only a few days ago Congress overrode another Nixon veto and so restored funds to build desperately needed hospitals and mental health facilities for the nation's sick people. The President turned down this bill because he said it was inflationary. But more than two-thirds of Congress -- including a majority of the members of the Republican Party -- voted to allocate for hospitals some of the money cut from the budget.

National priorities? Let's consider again each American's thousand dollar share of the nation's budget: \$4.50 for air and water pollution; \$5.00 for urban renewal for our cities; \$7.50 for elementary and secondary education; 50 cents for training the handicapped -- and \$375.00 for the military.

Once again, we must look to Congress for leadership. It was Congress that more than doubled President

Nixon's initial request for an increase in social security, providing a badly needed 15 percent increase. And just this week, your paychecks will be larger because a Democratic Congress voted to increase personal tax exemptions and eliminated the 5 percent surtax.

IV. Defense Spending Versus Domestic Spending

Whether after considering the defense budget and all of the other budgets that have been submitted, we then can move in the direction of either reducing the surcharge or move in the direction of some of our very difficult problems with regard to our cities, the problem of hunger and others—these are the options that I will have to consider at a later time.

: News Conference, March 14, 1969

So I ask you tonight: Who is really engaged in a "historic reordering of our national priorities" -- the Congress or the President?

One of our most urgent priorities for this decade is cleaning up our environment. Most of you heard the President speaking to this problem in his State of the Union Message this past January.



the new directions we believe are necessary to achieve this important national goal.

NOTE: For a memorandum from the President to heads of departments and agencies and for the text of his Executive order on equal employment opportunity in the Federal Government, see the preceding two items.

## Tax Reform Bill

*Statement by the President Following Passage of the Bill by the House of Representatives. August 8, 1969*

In my message to Congress on April 21, I stated that "we shall never make taxation popular, but we can make taxation fair."

The tax reform bill just passed by the House of Representatives is a long step in that direction. Not only did the House adopt, in essence, the administration's proposed minimum income tax and low income allowance, but it also added many constructive reforms to the 16 we proposed initially.

I am much aware of the many hours of cooperative labor that went into the preparation of this bill. To me this is further proof that the administration and the Congress, even in a time of politically divided government, can work constructively together to advance the national interest.

While the administration will have some suggestions in the Senate on certain specifics of this bill, I strongly endorse its passage by the House and commend the principal architects of the bill on the House Ways and Means Committee.

## THE PRESIDENT'S ADDRESS TO THE NATION ON DOMESTIC PROGRAMS

*Text of the President's Address on a New Family Assistance System, on Job Training and Placement, on the Office of Economic Opportunity, and on Revenue Sharing. August 8, 1969*

As you know, I returned last Sunday night from a trip around the world—a trip that took me to eight countries in 9 days.

The purpose of this trip was to help lay the basis for a lasting peace, once the war in Vietnam is ended. In the course of it, I also saw once again the vigorous efforts so many new nations are making to leap the centuries into the modern world.

Here in the United States, we are more fortunate. We have the world's most advanced industrial economy, the greatest wealth ever known to man, and the fullest measure of freedom ever enjoyed by any people, anywhere.

Yet we, too, have an urgent need to modernize our institutions—and our need is no less than theirs.

We face an urban crisis, a social crisis—and at the same time, a crisis of confidence in the capacity of government to do its job.

A third of a century of centralizing power and responsibility in Washington has produced a bureaucratic monstrosity, cumbersome, unresponsive, and ineffective.

A third of a century of social experiment has left us a legacy of entrenched programs that have outlived their time or outgrown their purposes.

A third of a century of unprecedented growth and change has strained our institutions, and raised serious questions about whether they are still adequate to the times.

IV. Defense Spending versus Domestic Spending  
President Nixon's Statement of Domestic Issues - August 8, 1969

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It is no accident, therefore, that we find increasing skepticism—and not only among the young, but among citizens everywhere—about the continuing capacity of government to master the challenges we face.

Nowhere has the failure of government been more tragically apparent than in its efforts to help the poor, and especially in its system of public welfare.

#### TARGET: REFORM

Since taking office, one of my first priorities has been to repair the machinery of government, and put it in shape for the 1970s. I have made many changes designed to improve the functioning of the executive branch. I have asked Congress for a number of important structural reforms: among others, a wide-ranging postal reform, a comprehensive draft reform, a reform of the unemployment insurance and antihunger programs, and reform of the present confusing hodge-podge of Federal grants-in-aid. Last April 21 I sent Congress a message asking for a package of major tax reforms, including both the closing of loopholes and the removal of more than 2 million low-income tax-paying families from the tax rolls entirely. I am glad Congress is acting now on tax reform; I hope it acts soon on the other reforms as well.

The purpose of all these reforms is to eliminate unfairness; to make government more effective as well as more efficient; and to bring an end to its chronic failure to deliver the service that it promises.

My purpose tonight however, is not to review the past record, but to present a new set of reforms—a new set of proposals—a new and drastically different approach to the way in which government cares for those in need, and to the way the responsibilities are shared between the State and Federal governments.

I have chosen to do so in a direct report to the people because these proposals call for public decisions of the first importance; because they represent a fundamental change in the Nation's approach to one of its most pressing social problems; and because, quite deliberately, they also represent the first major reversal of the trend toward ever more centralization of government in Washington. After a third of a century of power flowing from the people and the States to Washington it is time for a New Federalism in which power, funds, and responsibility will flow from Washington to the States and to the people.

During last year's election campaign, I often made a point that touched a responsive chord wherever I traveled.

I said that this Nation became great not because of what government did for people, but because of what people did for themselves.

This new approach aims at helping the American people do more for themselves.

It aims at getting everyone able to work off welfare rolls and onto payrolls. It aims at ending the unfairness in a system that has become unfair to the welfare recipient, unfair to the working poor, and unfair to the taxpayer.

This new approach aims to make it possible for people—wherever in America they live—to receive their fair share of opportunity. It aims to ensure that people receiving aid, and who are able to work, contribute their fair share of productivity.

This new approach is embodied in a package of four measures: first, a complete replacement of the present welfare system; second, a comprehensive new job training and placement program; third, a re-vamping of the Office of Economic Opportunity; and fourth, a start on the sharing of the Federal tax revenues with the States.

Next week—in three messages to the Congress and one statement—I will spell out in detail what these measures contain. Tonight I want to explain what they mean, what they are intended to achieve, and how they are related.

#### WELFARE

Whether measured by the anguish of the poor themselves, or by the drastically mounting burden on the taxpayer, the present welfare system has to be judged a colossal failure.

Our States and cities find themselves sinking in a welfare quagmire, as caseloads increase, as costs escalate, and as the welfare system stagnates enterprise and perpetuates dependency. What began on a small scale in the depression thirties has become a monster in the prosperous sixties. The tragedy is not only that it is bringing States and cities to the brink of financial disaster, but also that it is failing to meet the elementary human, social, and financial needs of the poor.

It breaks up homes. It often penalizes work. It robs recipients of dignity. And it grows.

Benefit levels are grossly unequal—for a mother with three children, they range from an average of \$263 a month in one State, down to an average of \$39 in another State. So great an inequality is wrong; no child is "worth" more in one State than in another. One result of this inequality is to lure thousands more into already overcrowded inner cities, as unprepared for city life as they are for city jobs.

The present system creates an incentive for desertion. In most States, a family is denied welfare payments if a father is present—even though he is unable to support his family. In practice, this is what often happens: a father is unable to find a job at all, or one that will support his children. To make the children eligible for welfare, he leaves home—and the children are denied the authority, the discipline and the love that come with having a father in the house. This is wrong.

The present system often makes it possible to receive more money on welfare than on a low-paying job. This creates an incentive not to work; it also is unfair to the working poor. It is morally wrong for a family that is working to try to make ends meet to receive less than the family across the street on welfare. This has been bitterly resented by the man who works, and rightly so—the rewards are just the opposite of what they should be. Its effect is to draw people off payrolls and onto welfare rolls—just the opposite of what government should be doing. To put it bluntly and simply—any system which makes it more profitable for a man not to work than to work, and which encourages a man to desert his family rather than stay with his family, is wrong and indefensible.

We cannot simply ignore the failures of welfare, or expect them to go away. In the past 8 years, 3 million more people have been added to the welfare rolls—all in a period of low unemployment. If the present trend continues, another 4 million will have joined the welfare rolls by

1975. The financial cost will be crushing; the human cost will be suffocating.

I propose that we abolish the present welfare system and adopt in its place a new family assistance system. Initially, this new system would cost more than welfare. But unlike welfare, it is designed to correct the condition it deals with and thus to lessen the long-range burden.

Under this plan, the so-called "adult categories" of aid—aid to the aged, the blind, and disabled—would be continued, and a national minimum standard for benefits would be set, with the Federal Government contributing to its cost and also sharing the cost of additional State payments above that amount.

But the program now called "Aid to Families with Dependent Children"—the program we normally think of when we think of "welfare"—would be done away with completely. The new family assistance system I propose in its place rests essentially on three principles: equality of treatment, a work requirement, and a work incentive.

Its benefits would go to the working poor, as well as the nonworking; to families with dependent children headed by a father, as well as to those headed by a mother; and a basic Federal minimum would be provided, the same in every State.

I propose that the Federal Government build a foundation under the income of every American family with dependent children that cannot care for itself—wherever in America that family may live.

For a family of four now on welfare, with no outside income, the basic Federal payment would be \$1,600 a year. States could add to that amount and most would do so. In no case would anyone's present level of benefits be lowered. At the same time, this foundation would be one on which the family itself could build. Outside earnings would be encouraged, not discouraged. The new worker could keep the first \$60 a month of outside earnings with no reduction in his benefits, and beyond that his benefits would be reduced by only 50 cents for each dollar earned.

By the same token, a family head already employed at low wages could get a family assistance supplement: those who work would no longer be discriminated against. A family of five in which the father earns \$2,000 a year—which is the hard fact of life for many families—would get family assistance payments of \$1,260 for a total income of \$3,260. A family of seven earning \$3,000 a year would have its income raised to \$4,360.

Thus, for the first time, the government would recognize that it has no less of an obligation to the working poor than to the nonworking poor; and for the first time, benefits would be scaled in such a way that it would always pay to work.

With such incentives, most recipients who can work will want to work. This is part of the American character.

But what of the others—those who can work but choose not to?

The answer is very simple.

Under this proposal, everyone who accepts benefits must also accept work or training provided suitable jobs are available either locally or at some distance if transportation is provided. The only exceptions would be those unable to work, and mothers of preschool children. Even mothers of preschool children, however, would have the opportunity to work—because I am also proposing along with this a major expansion of day-care



centers to make it possible for mothers to take jobs by which they can support themselves and their children.

This national floor under incomes for working or dependent families is not a "guaranteed income." Under the guaranteed income proposal, everyone would be assured a minimum income, regardless of how much he was capable of earning, regardless of what his need was, regardless of whether or not he was willing to work.

During the presidential campaign last year I opposed such a plan. I oppose it now, and will continue to oppose it. A guaranteed income would undermine the incentive to work; the family assistance plan increases the incentive to work. A guaranteed income establishes a right without responsibilities; family assistance recognizes a need *and* establishes a responsibility. It provides help to those in need, and in turn requires that those who receive help work to the extent of their capabilities. There is no reason why one person should be taxed so that another can choose to live idly.

In States that now have benefit levels above the Federal floor, family assistance would help ease the States' financial burdens. But in 20 States—those in which poverty is most widespread—the new Federal floor would be above present average benefit levels, and would mean a leap upward for many thousands of families that cannot care for themselves.

#### MANPOWER TRAINING

Next, let me turn to the job training proposals that are part of our full opportunity concept. America prides itself on being the "land of opportunity." I deeply believe in this ideal.

Full opportunity means the chance for upward mobility on every rung of the economic ladder—and for every American, no matter what his handicaps of birth.

The cold, hard truth is that a child born to a poor family has far less chance to make a good living than a child born to a middle-income family.

He is born poor, fed poorly; and if his family is on welfare, he starts life in an atmosphere of handout and dependency; often he receives little preparation for work and less inspiration. The wonder of the American character is that so many have the spark and drive to fight their way up. But for millions of others, the burden of poverty in early life stifles that spark.

The new family assistance would provide aid for needy families; it would establish a work requirement, and a work incentive; but these in turn require effective programs of job training and job placement—including a chance to qualify not just for any jobs, but for good jobs, that provide both additional self-respect and full self-support.

Therefore, I am also sending a message to Congress calling for a complete overhaul of the Nation's manpower training services.

The Federal Government's job training programs have been a terrible tangle of confusion and waste. They are overcentralized, overcategorized; with good reason, many young people wonder why the Federal Government cannot take money out of one program that has too few applicants and use it instead to expand another that has too many. They wonder why they have to accept training programs they have no interest in, instead of ones they care about. They want to be treated as human beings, not cogs in a machine.

To remedy the confusion, arbitrariness and rigidity of the present system, the new Manpower Training Act would basically do three things:

- It would pull together the jumble of programs that currently exist, and equalize standards of eligibility.
- It would provide flexible funding—so that Federal money would follow the demands of labor and industry, and flow into those programs that people most want and need.
- It would decentralize administration, gradually moving it away from the Washington bureaucracy and turning it over to States and localities.

In terms of its symbolic importance, I can hardly overemphasize this last point. *For the first time, applying the principles of the New Federalism, administration of a major established Federal program would be turned over to the States and local governments, recognizing that they are in a position to do the job better.*

For years, thoughtful Americans have talked of the need to decentralize government. The time has come to begin.

Federal job training programs have grown to vast proportions, costing more than a billion dollars a year. Yet they are essentially local in character. As long as the Federal Government continues to bear the cost, they can perfectly well be run by States and localities—and that way they can better be adapted to specific State and local needs.

What I propose is not a sudden dumping of these programs on unprepared local authorities, but rather a careful, phased transfer, with benchmarks of readiness and incentives for performance. If States and localities decline to pick up the responsibility, the Federal Government will continue to manage the programs. If they try and fail, the Federal Government can resume the responsibility. We should trust the American capacity for self-government enough to try. The only way to bring about decentralization is to do it, and this is the place to begin.

The Manpower Training Act will have other provisions specifically designed to help move people off welfare rolls and onto payrolls:

- A computerized job bank would be established, to match job-seekers with job vacancies.
- For those on welfare, a \$30 a month bonus would be offered as an incentive to go into job training.
- For heads of families now on welfare, 150,000 new training slots would be opened.
- As I mentioned previously, greatly expanded day-care center facilities would be provided for the children of welfare mothers who choose to work. However, these would be day-care centers with a difference. There is no single ideal to which this administration is more firmly committed than to the enriching of a child's first 5 years of life, and thus helping lift the poor out of misery at a time when a lift can help the most. Therefore, these day-care centers would offer more than custodial care; they would also be devoted to the development of vigorous young minds and bodies. As a further dividend, the day-care centers would offer employment to many welfare mothers themselves.

#### OFFICE OF ECONOMIC OPPORTUNITY

One common theme running through my proposals tonight is that of providing full opportunity for every American. A second theme is that of

trying to equip every American to play a productive role. A third is the need to make government itself workable—which means reshaping, reforming, innovating.

The Office of Economic Opportunity is an innovative agency—and thus it has a vital place in our efforts to develop new programs and apply new knowledge. But in order to do effectively what it can do best, OEO itself needs reorganization.

In the past, OEO suffered from a confusion of roles, and from a massive attempt to do everything at once, with the same people performing many conflicting functions: coordinating old programs, doing new research, setting up demonstration projects, evaluating results, and serving as advocates for the poor. As a result, inefficiency, waste, and resentment too often clouded the record of even its best accomplishments.

This Administration has made a thorough study of OEO. We have assigned it a leading role in the effort to develop and test new approaches to the solving of social problems. OEO is to be a laboratory agency, where new ideas for helping people are tried on a pilot basis. When these prove successful, they can be "spun off" to operating departments or agencies—just as the space agency, for example, "spun off" the weather satellite and the communications satellite when these proved successful. Then OEO will be free to concentrate on breaking even newer ground.

OEO has a broad charter: not only to help make opportunity real, but to search out ways of making institutions more responsive, and to get behind the effects of poverty to the causes of poverty. These goals are fundamental commitments of this administration.

The OEO reorganization to be announced next week will stress its innovative role. It also will stress accountability, a clear separation of functions, and a tighter, more effective organization of field operations.

#### REVENUE SHARING

We come now to a proposal which I consider profoundly important to the future of our Federal system of shared responsibilities. As we look ahead to the 1970's and the 1980's, it also is vital in terms of ensuring that States and localities can continue to do their part in dealing with the kinds of social problems I have been discussing tonight.

When we speak of poverty or jobs or opportunity, or making government more effective or getting it closer to the people, it brings us directly to the financial plight of our States and cities.

We can no longer have effective government on any level unless we have it on all levels. There is too much to be done for the cities to do it alone, or for the States to do it alone—or for Washington to do it alone.

For a third of a century, power and responsibility have flowed toward Washington—and Washington has taken for its own the best sources of revenue.

We intend to reverse this tide, and to turn back to the States a greater measure of responsibility—not as a way of avoiding problems, but as a better way of solving problems. Along with this should go a share of Federal revenues. I shall propose to the Congress next week that a set portion of the revenues from Federal income taxes be remitted directly to the States—with a minimum of Federal restrictions on how those



dollars are to be used, and with a requirement that a percentage of them be channeled through for the use of local governments.

The funds provided under this program will not be great in the first year. But the principle will have been established, and the amounts will increase as our budgetary situation improves.

As we look ahead to the complex tasks of the seventies, as we contemplate the diversity of this vast and varied country, it is clear beyond question that effective, responsive government will require not one center of power, but many. This start on revenue sharing is a step toward the New Federalism. It is gesture of faith in America's States and localities, and in the principles of democratic self-government.

With this revenue sharing proposal, we follow through on a commitment I made in the last campaign: we follow through on a mandate which the electorate gave us last November—after nearly 40 years of moving power from the States to Washington, we begin in America a decade of decentralization, a shifting of power away from the center whenever it can be used better locally.

In recent years, we all have concentrated a great deal of attention on what we commonly call the "crisis of the cities." These proposals I have made are addressed in part to that, but they also are focused much more broadly.

They are addressed to the crisis of government—to adapting its structures and making it manageable.

They are addressed to the crisis of poverty and need—which is rural as well as urban. This administration is committed to full opportunity on the farm as well as in the city; to a better life for rural America; to ensuring that government is responsive to the needs of rural America. These proposals will advance those goals.

I have discussed these four matters together because together they make both a package and a pattern. They should be studied together, debated together, seen in perspective.

These proposals will be controversial. They also are expensive. Let us face that fact frankly and directly.

The first-year costs of the new family assistance program, including the child care centers and job training, would be \$4 billion. I deliberated long and hard over whether we could afford such an outlay. I decided in favor of it for two reasons: because the costs would not begin until fiscal 1971, when I expect the funds to be available; and because I concluded that this is a reform we cannot afford *not* to undertake. The cost of continuing the present system, in financial as well as human terms, is staggering if projected into the 1970's.

Revenue sharing would begin in the middle of fiscal 1971, at a half-year cost of a half billion dollars. This cuts into the Federal budget, but it represents relief for the equally hard-pressed States. It would help curb the rise in State and local taxes.

Overall, we would be spending more—in the short run—to help people who now are poor and who now are unready for work or unable to find work.

I see it this way: Every businessman and every working man knows what "start-up costs" are. They are a heavy investment made in early years, in the expectation that they will more than pay for themselves in future years.

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The investment in these proposals is a human investment; it also is a "start-up cost" in turning around our dangerous decline into welfarism. We cannot produce productive people with the antiquated, wheezing, overloaded machine we now call the welfare system.

If we fail to make this investment in work incentives now, if we merely try to patch up the system here and there, we will only be pouring good money after bad in ever-increasing amounts.

If we do invest in this modernization, the heavily-burdened taxpayer at least will see the light at the end of the tunnel. And the man who now looks ahead only to a lifetime of dependency will see hope for a life of work and pride and dignity.

In the final analysis, we cannot talk our way out of poverty; we cannot legislate our way out of poverty; but this Nation can work its way out of poverty. What America needs now is not more welfare but more "workfare."

The task of this Government, the great task of our people, is to provide the training for work, the incentive to work, the opportunity to work, and the reward for work. Together, these measures are a first long step in that direction.

For those in the welfare system today, or struggling to fight their way out of poverty, these measures offer a way to independence through the dignity of work.

For those able to work, these measures provide new opportunities to learn work and to find work.

For the working poor—the forgotten poor—these measures offer a fair share in the assistance given to the poor.

The new system establishes a direct link between the Government's willingness to help the needy, and the willingness of the needy to help themselves.

It removes the present incentive not to work, and substitutes an incentive to work; it removes the present incentive for families to break apart, and substitutes an incentive for families to stay together.

It removes the blatant inequities, injustices, and indignities of the welfare system.

It establishes a basic Federal floor, so that children in any State can have at least the minimum essentials of life.

Together, these measures cushion the impact of welfare costs on States and localities, many of which have found themselves in fiscal crisis as costs have spiraled.

They bring reason, order, and purpose into a tangle of overlapping programs, and show that government can be made to work.

Poverty will not be defeated by a stroke of a pen signing a check; it will not be reduced to nothing overnight with slogans or ringing exhortations.

Poverty is not only a state of income. It is also a state of mind and a state of health. Poverty must be conquered without sacrificing the will to work, for if we take the route of the permanent handout, the American character will itself be impoverished.

In my recent trip around the world, I visited countries in all stages of economic development; countries with different social systems, different economic systems, different political systems.

In all of them, however, I found that one event had caught their imagination and lifted their spirits almost beyond measure: The trip of Apollo to the moon and back. On that historic day when the astronauts set foot on the moon, the spirit of Apollo 11 truly swept the world—a spirit of peace and brotherhood and adventure, and a spirit that thrilled to the knowledge that man had dreamed the impossible, dared the impossible, and done the impossible.

Abolishing poverty, putting an end to dependency—like reaching for the moon a generation ago, that may be impossible. But in the spirit of Apollo, we can lift our sights and marshal our best efforts. We can resolve to make this the year, not that we reached the goal, but that we turned the corner: From a dismal cycle of dependency toward a new birth of independence; from despair toward hope; from an ominously mounting importance of government toward a new effectiveness of government—and toward a full opportunity for every American to share the bounty of this rich land.

NOTE: The President delivered the address on nationwide radio and television at 10 p.m. As printed above, this item follows the advance text, which carried the notation: "Because of TV time limitations, there may be minor deletion of this text on delivery. The President stands by the full text as printed above."

## Federal Maritime Commission

*Statement by the President Upon Announcing His Intention To Nominate Mrs. Helen D. Bentley as Member and Chairman. August 9, 1969*

In nominating Helen Bentley as a member of the Federal Maritime Commission, I am conscious of the fact that in one way at least, this nomination is unique.

Mrs. Bentley has earned a very strong position for herself in what most of us would feel to be "a man's world"—the world of maritime affairs. As maritime editor of the Baltimore Sun, she has won the respect of all segments—labor and management alike—in this field and has established a record of professional excellence unsurpassed by any maritime expert in the country.

Although we are at the beginning of the age of space, it is good to be reminded that the United States is a sea power, a nation that has grown and prospered over the years because of our maritime trade with every corner of the earth and because our ports have been recognized as some of the best in the world.

Helen Bentley knows the world of maritime trade. She has not only reported it from a desk at the Baltimore Sun; she has traveled all over the world to the great seaports, she has sailed on ships and learned much of their operations at first hand. She knows that maritime trade,

which has played such an important part in the development of civilization in ages past, is still an important area today.

She knows—perhaps better than anyone else—the complex and profoundly important world of the sea and its influence on the strength and growth of our Nation.

Although Mrs. Bentley is well aware that she is being nominated to this post solely on her very considerable merits as a maritime expert, it would be less than candid of me not to say how gratified I am to be able to nominate a woman to such an important position.

There was once a time when, I suppose, there was a bit of condescension involved in appointing a woman to an important position. That day is gone. Mrs. Bentley is representative of the extremely well-qualified women we have been able to bring into Government service. As a knowledgeable lady in a man's world, she has gained a reputation for being the best there is. That, in the long run, is what we are looking for in any position, and I am doubly glad that in Mrs. Bentley we find that the best there is also just happens to be a charming and wonderful lady.

And now I would like to add one important point: Upon Mrs. Bentley's confirmation by the Senate, it is my intention to designate her as chairman of the Maritime Commission.

NOTE: For biographic data concerning Mrs. Bentley, see the following item.

President NixonMr. O'BrienIV. Defense Spending versus Domestic Spending

Q. Mr. President, last week the White House Conference on Food and Nutrition strongly recommended approval of a bill which has passed the Senate to reform the food stamp program that is blocked in the House and

another bill which would reform the school lunch program which has passed the House, but is blocked in the Senate.

Your administration is reported to be lobbying against both bills. Will you follow the recommendations of your White House Conference, and what course of action will you take?

THE PRESIDENT. I favor the approach that our administration has put before the Congress as being the more responsible approach on both scores. I will, of course, consider the recommendations of the White House Conference, which will be made to me at my request within approximately 30 days.

There is another recommendation by the White House Conference which I, unfortunately, cannot give really sympathetic consideration to, and that is the one recommending a \$5,400 minimum for a family of four in America. That would cost approximately \$70 billion to \$80 billion in taxes, or \$70 billion to \$80 billion in increased prices. Now, I do not say that to discredit the Conference.

I simply say that all of us in this country want to end hunger in the United States. All of us want the poor to have a minimum floor, and that minimum to be as high as possible.

All of us, for example, want social security to be higher. But when I consider all of these matters, I have to think also of this fact: the fact that I, as President, am the one who has the primary responsibility for the cost of living in this country.

Referring a moment ago to the tax question, it would be very easy for me to sign a bill which reduces taxes. But if I sign the kind of a bill which the Senate is about to pass, I would be reducing taxes for some of the American people and raising the prices for all the American people.

I will not do that.

Mr. Klaplow. News Conference, Dec. 8, 1969

But I can assure you that not only to present, but to stay within a balanced budget requires some very hard decisions. It means rejecting spending programs which would benefit some of the people when their net effect would result in price increases for all the people.

It is time to quit putting good money into bad programs. Otherwise, we will end up with bad money and bad programs.

I recognize the political popularity of spending programs, particularly in an election year. But unless we stop the rise in prices, the cost of living for millions of American families will become unbearable and government's ability to plan programs for progress for the future will become impossible.

State of the Union Message,  
January 22, 1970

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## HEW-LABOR-OEO APPROPRIATIONS BILL

*Remarks of the President in a Radio and Television Address on His Veto of the Bill. January 26, 1970*

*Good evening, my fellow Americans:*

I would like to share with you tonight a decision that is one of the most difficult decisions I have made since I assumed the Office of the Presidency a year ago.

I have here on my desk a bill, a bill which has been passed by the Congress and sent to me for signature. For the first time, I am exercising tonight the constitutional power of the President to veto a bill and send it back to the Congress for further consideration.

This decision is particularly difficult because this bill provides funds for the Department of Health, Education, and Welfare.

Now let us clearly understand the issues. The issue is not whether some of us are for education and health and others are against it.

There are no goals which I consider more important for this Nation than to improve education and to provide better health care for the American people.

The question is: How much can the Federal Government afford to spend on these programs this year?

In April I asked the Congress to appropriate more for the Department of Health, Education, and Welfare than it has ever appropriated before. This means that this year the Federal Government will spend 13 percent more on programs for health, education, and welfare than it spent last year. For Federal programs that affect education, we will spend over \$10 billion. Now in this bill that I have before me, the Congress has increased the amount that I recommended by \$1 billion 260 million. Over \$1 billion of this increase is in the field of education.

Now, why, in an election year, particularly, would a President hesitate for one moment to sign a bill providing for such politically popular causes as this one? The reason is this: The President of the United States has an obligation to consider all the worthy causes that come before him and he is to consider them having in mind only one principle: What is best for all the people of the United States?

I believe that the increase over the amount that I recommended, the increase which is contained in this bill passed by the Congress, is not in the best interests of all the American people, because it is in the wrong amount for the wrong purposes and at the wrong time.

Let me address myself first to the questions of the amount of spending involved.

This Nation faces a crisis which directly affects every family in America—the continuing rise in the cost of living. From 1960 to 1970, the cost of living went up 25 percent in this country. Now, for the average family of four in America that meant an increase of \$2,400 a year in the items that go into your cost of living—your grocery bills, your housing, your transportation, your medical costs.

A major reason for this increase in the cost of living is that in that same 10-year period from 1960 to 1970, the Federal Government spent \$57 billion more than it took in in taxes.

I think this was wrong. That is why as your President I intend to do everything that I can to see that the Federal Government spends less in

## IV. Defense Spending versus Domestic Spending

Washington so that you can have more to spend at home. If we are to stop the rise in the cost of living which is putting such a strain on the family budgets of millions of Americans, we have to cut the Federal budget.

That is why I ordered cuts of \$7 billion in Federal spending in 1970. That is why, for example, the budget I will submit to Congress for 1971 will call for a smaller percentage of Federal spending for defense than in any year since 1950.

For the first time in 20 years the budget will provide more funds for human resources than for defense.

Now, if I approved the increased spending contained in this bill, I would win the approval of many fine people who are demanding more spending by the Federal Government for education and health. But I would be surrendering in the battle to stop the rise in the cost of living, a battle we must fight and win for the benefit of every family in this Nation.

A second reason I am vetoing this bill is that I believe that it increases spending for the wrong purposes. The increased spending ordered by Congress for the most part simply provides more dollars for the same old programs without making the urgent new reforms that are needed if we are to improve the quality of education and health care in America.

I believe that when we consider how much we are putting into education in the United States, that we are entitled to get more out in terms of better quality in education. That is why in my education message which I shortly will be submitting to the Congress I will propose a new and searching look at our American school system. In this examination we will look at such basic questions as why millions of our children in school are unable to read adequately; we will put emphasis on improving the quality of education for every child in America.

An example of the unfairness of this bill is the Impacted Aid Program which is supposed to help areas which need assistance because of the presence of Federal installations. The bill provides \$6 million for the one-half million people who live in the richest county in the United States, and only \$3 million for the three million people that live in the 100 poorest counties in the United States.

President Eisenhower, President Kennedy, President Johnson all criticized this program as being unfair. And yet the Congress in this bill not only perpetuates this unfair program, it adds money to it.

The third reason I am vetoing this bill is because it requires the money to be spent at the wrong time. We are now nearly three-quarters of the way through the school year. This bill forces us to spend the money it appropriates—and we would have to spend it all before June 30.

When money is spent in a hurry, a great deal is wasted. There is no good time to waste the taxpayers' money, but there is no worse time to waste it than today.

The Congress will determine on Wednesday whether it will sustain or override my veto of this legislation. If the veto is sustained, I will immediately seek appropriations which will assure the funds necessary to provide for the needs of the Nation in education and health.

You can be sure that no school will need to be closed. No school child will be denied an education as a result of the action I take tonight. I will work with the Congress in developing a law that will ease the transition to education reform and do so without inflation.

I realize that a number of Congressmen and Senators, as well as many who are members of what is called the education lobby, disagree

impaired  
substance

with the views I have expressed tonight. I respect their different viewpoint. I deeply share the concerns of those who want more funds for education and for health and for other worthy causes in this country.

But it is my duty to act on behalf of the millions of Americans, including teachers and students, as well as patients in our hospitals, who will pay far more in the rise in the cost of living than they will receive from the increased spending provided for in this bill.

We spend more for health and education than any nation in the world. We are able to do this, and I hope we can continue to do so in the future, because we have the great good fortune to be the richest nation by far in the whole history of the world.

But we can spend ourselves poor. That is why no matter how popular a spending program is, if I determine that its enactment will have the effect of raising your prices or raising your taxes, I will not approve that program.

Now, for these reasons, for the first time, tonight, instead of signing a bill which has been sent to me by the Congress, I am signing this veto message. My fellow Americans, I believe this action is in the long-range interests of better education and improved health care. But most important, I believe that this action that I have just taken is in the vital interests of all Americans in stopping the rise in the cost of living.

Thank you, and good night.

NOTE: The President spoke at 9 p.m. in his office at the White House. For the text of the President's veto message, see the following item.



#### IV. Defense Spending versus Domestic Spending

One change is that defense spending is on the way down. For the first time in 20 years, the Federal Government is spending more on human resource programs than on national defense.

This year we are spending \$1.7 billion less on defense than we were a year ago; in the next year, we plan to spend \$5.2 billion less. This is more than a redirection of resources. This is an historic reordering of our national priorities.

New here is that program:

To provide more help now to those workers who have lost jobs, I urge the Congress to pass the legislation I have proposed to expand and strengthen our unemployment insurance system. This legislation would cover almost 5 million more people who lack this protection now, and the system would be made more responsive to changing economic conditions.

I submitted this legislation to the Congress almost a year ago. It is time for the Congress to act.

To help those in need of job training, I urge the Congress to pass the Manpower Training Act which provides an automatic increase in manpower training funds in times of high unemployment. I submitted this proposal to the Congress 10 months ago. It is time for the Congress to act.

I ask for full appropriation for the Office of Economic Opportunity and I request the Congress to provide at once a supplemental budget of \$50 million to provide useful training and support to young people who are out of school in the summer months.

To further protect the small investor, I support the establishment of an insurance corporation with a Federal backstop to guarantee the investor against losses that could be caused by financial difficulties of brokerage houses. While this would not affect the equity risk that is always present in stock market investment, it will assure the investor that the stability of the securities industry itself does not become cause for concern.

To relieve the worries of many of our older citizens living on fixed incomes, I urge the Congress to pass my proposal to tie social security benefits to the cost of living. This proposal, passed by the House, awaiting Senate action for the past month, will keep the burden of the fight against inflation from falling on those least able to afford it.

To stimulate an industry bearing the brunt of high interest rates, I urge enactment of the Emergency Home Finance Act of 1970. This would attract as much as \$6 billion into the housing market in the coming fiscal year. More than a third of a million families need this legislation for home financing now; and the resulting new construction of more than 200,000 houses will also help provide many new jobs.

This housing bill was passed unanimously by the Senate. It has been awaiting action for 3 months in the House. It is time for the Congress to act.

To help the small businessman who finds it difficult to get necessary credit, I have asked the Congress for greater authority for the Small Business Administration to stimulate banks and others to make loans to small businesses at lower interest rates. I submitted this legislation to the Congress 3 months ago. It is time for the Congress to act.

To strengthen our railroad industry, I am asking for legislation that will enable the Department of Transportation to provide emergency assistance to railroads in financial difficulties. I am also urging the independent Interstate Commerce Commission to give prompt attention to the urgent financial problems of this industry.

And finally, to curb inflationary pressures throughout our economy, I call upon the Congress to join me in holding down Government spending to avoid a large budget deficit. This requires a new restraint on spending programs and the passage of the revenue-producing measures that I have already made.

**Address on Economics,  
June 17, 1970**

## President Nixon

### V. Air and Water Pollution

Q. Mr. President, may I ask you two questions about the disaster in Santa Barbara. One, do Secretary Hickel's actions so far accord with your policies; and two, what implications does this disaster have for future conservation policy here?

THE PRESIDENT. Well, answering the second part of your question first, I have found that for 15 years we have not had any updating of our policies with regard to offshore drilling. Secretary Hickel has now initiated a study within the Department for updating those regulations so that this kind of incident will not occur again.

With regard to the action that he has taken, I think he acted promptly in temporarily stopping the drilling and then insisting on very stringent requirements on the Union Oil Company and others involved so that this would not happen.

Looking to the future however, we have got to get at the source of the problem. That means very stringent regulations in off-shore drilling, because there isn't any question that if the companies involved will make the necessary expenditures in setting up their wells off-shore, there is minimal danger of this kind of an activity.

### News Conference, Feb. 6, 1969

The great question of the seventies is, shall we surrender to our surroundings, or shall we make our peace with nature and begin to make reparations for the damage we have done to our air, to our land, and to our water?

Restoring nature to its natural state is a cause beyond party and beyond factions. It has become a common cause of all the people of this country. It is a cause of particular concern to young Americans, because they more than we will reap the grim consequences of our failure to act on programs which are needed now if we are to prevent disaster later.

Clean air, clean water, open spaces—these should once again be the birthright of every American. If we act now, they can be.

## Mr. O'Brien

That is what President Nixon said he would propose, and to many it seemed an impressive call for action. But the fact is that the 10 billion dollar program he promised calls for federal spending of only four billion dollars.

The amount Mr. Nixon proposed for the first year of his new program to fight water pollution turned out to be less than Congress had already authorized.

And so, 18 months later, the pattern of the Nixon Administration's domestic program is abundantly clear -- ringing calls for action, but few results, except when Congress takes the initiative and calls the shots.

But our attention to our critical domestic priorities continues to be diverted by the seemingly endless struggle in Indochina, about which the President addressed the nation on April 30.

## V. Air and Water Pollution

We still think of air as free. But clean air is not free, and neither is clean water. The price tag on pollution control is high. Through our years of past carelessness we incurred a debt to nature, and now that debt is being called.

The program I shall propose to Congress will be the most comprehensive and costly program in this field in America's history.

It is not a program for just one year. A year's plan in this field is no plan at all. This is a time to look ahead not a year, but 5 years or 10 years—whatever time is required to do the job.

I shall propose to this Congress a \$10 billion nationwide clean waters program to put modern municipal waste treatment plants in every place in America where they are needed to make our waters clean again, and do it now.

We have the industrial capacity, if we begin now, to build them all within 5 years. This program will get them built within 5 years.

As our cities and suburbs relentlessly expand, those priceless open spaces needed for recreation areas accessible to their people are swallowed up—often forever. Unless we preserve these spaces while they are still available, we will have none to preserve. Therefore, I shall propose new financing methods for purchasing open space and parklands, now, before they are lost to us.

The automobile is our worst polluter of the air. Adequate control requires further advances in engine design and fuel composition. We shall intensify our research, set increasingly strict standards, and strengthen enforcement procedures—and we shall do it now.

We can no longer afford to consider air and water common property, free to be abused by anyone without regard to the consequences. Instead, we should begin now to treat them as scarce resources, which we are no more free to contaminate than we are free to throw garbage into our neighbor's yard.

This requires comprehensive new regulations. It also requires that, to the extent possible, the price of goods should be made to include the costs of producing and disposing of them without damage to the environment.

Now I realize that the argument is often made that there is a fundamental contradiction between economic growth and the quality of life, so that to have one we must forsake the other.

The answer is not to abandon growth, but to redirect it. For example, we should turn toward ending congestion and eliminating smog the same reservoir of inventive genius that created them in the first place.

Continued vigorous economic growth provides us with the means to enrich life itself and to enhance our planet as a place hospitable to man. Each individual must enlist in this fight if it is to be won.

It has been said that no matter how many national parks and historical monuments we buy and develop, the truly significant environment for each of us is that in which we spend 90 percent of our time—in our homes, in our places of work, the streets over which we travel.

Street litter, rundown parking strips and yards, dilapidated fences, broken windows, smoking automobiles, dingy working places, all should be the object of our fresh view.

We have been too tolerant of our surroundings and too willing to leave it to others to clean up our environment. It is time for those who make massive demands on society to make some minimal demands on themselves. Each of us must resolve that each day he will leave his home, his property, the public places of the city or town a little cleaner, a little better, a little more pleasant for himself and those around him.

With the help of people we can do anything. Without their help we can do nothing. In this spirit, together, we can reclaim our land for ours and generations to come.

Between now and the year 2000, over 100 million children will be born in the United States. Where they grow up—and how—will, more than any one thing, measure the quality of American life in these years ahead.

This should be a warning to us.

For the past 30 years our population has also been growing and shifting. The result is exemplified in the vast areas of rural America emptying out of people and of promise—a third of our counties lost population in the sixties.

The violent and decayed central cities of our great metropolitan complexes are the most conspicuous area of failure in American life today.

I propose that before these problems become insoluble, the Nation develop a national growth policy.

In the future, government decisions as to where to build highways, locate airports, acquire land, or sell land should be made with a clear objective of aiding a balanced growth for America.

In particular, the Federal Government must be in a position to assist in the building of new cities and the rebuilding of old ones.

At the same time, we will carry our concern with the quality of life in America to the farm as well as the suburb, to the village as well as to the city. What rural America needs most is a new kind of assistance. It needs to be dealt with, not as a separate nation, but as part of an overall growth policy for America. We must create a new rural environment which will not only stem the migration to urban centers, but reverse it. If we seize our growth as a challenge, we can make the 1970's an historic period when by conscious choice we transformed our land into what we want it to become. **State of the Union, Jan. 22, 1970**

## President Nixon

## Mr. O'Brien

### VI. Student Dissent and National Unity

The simple things are the ones most needed today if we are to surmount what divides us, and cement what unites us.

To lower our voices would be a simple thing.

In these difficult years, America has suffered from a fever of words; from inflated rhetoric that promises more than it can deliver; from angry rhetoric that fans discontents into hatreds; from bombastic rhetoric that postures instead of persuading.

We cannot learn from one another until we stop shouting at one another—until we speak quietly enough so that our words can be heard as well as our voices.

For its part, government will listen. We will strive to listen in new ways—to the voices of quiet anguish, the voices that speak without words, the voices of the heart—to the injured voices, the anxious voices, the voices that have despaired of being heard.

Those who have been left out, we will try to bring in.

Those left behind, we will help to catch up.

For all of our people, we will set as our goal the decent order that makes progress possible and our lives secure.

As we reach toward our hopes, our task is to build on what has gone before—not turning away from the old, but turning toward the new. **Inaugural Address, Jan 20, 1969**

Like most of you, I applauded the appeal for lowered voices and national unity when Richard Nixon assumed the Presidency 18 months ago.

Good evening. I'm Larry O'Brien, national Chairman of the Democratic Party. I managed the Democratic campaign for President in 1968. And I recognized after the election that we all had to turn away from the narrow confines of partisanship and work in the active pursuits of national reconciliation.

But today the divisions within our society are far greater than they were 18 months ago.

I don't have any easy answers. But the American people are not afraid to face problems squarely, and I know you want facts.

In this spirit, then, the loyal opposition has the responsibility to ask: How, in fact, are we being governed? What progress are we making as a nation? How can we do better? How can the nation and our two-party system meet the challenge of the '70s? How can we achieve the goals the new President set forth in his Inaugural Address 18 months ago?

President Nixon

Mr. O'Brien

VI. Student Dissent and National Unity

Q. You demonstrated a great deal of interest, Mr. President, in young people in your discussions both public and private abroad. Do you feel that those discussions have given you a better understanding of young people abroad, and are their problems similar to the problems of young people in this country?

THE PRESIDENT. Well, the problems differ, of course, in the different countries. I think they are the same in one respect. The young people abroad, it seems, have somewhat the same problem as many young people here. They know what they are against, but they find difficulty in knowing what they are for. This is not unusual, because this is perhaps something that is common to young people generally, except that when we look to the revolutions of the past, the revolutionary movements, usually there has been—whether we agreed with those movements or not—there was something, a philosophy, that the young people who supported the revolutions were for. All over Europe this seems to be the case—a young generation against the established institution, against the way the universities are run, and yet not having a sense of purpose, a sense of direction, a sense of idealism.

I feel that that is part of the problem here in the United States, and I think that much of the responsibility rests not on the young people for not knowing what they are for, but on older people for not giving them the vision and the sense of purpose and the idealism that they should have.

In talking—and I talked with every leader about this, every one—all of us are concerned about it. All of us feel that we must find for this great Western family of ours a new sense of purpose and idealism—one that young people will understand that they can be for.

That is not a satisfactory answer, because I am not able to describe it yet. But, believe me, we are searching for it.

**News Conference, March 4, 1969**



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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,655

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COLUMBIA BROADCASTING SYSTEM, INC.,  
*Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION and  
UNITED STATES OF AMERICA,  
*Respondents,*

DEMOCRATIC NATIONAL COMMITTEE,  
REPUBLICAN NATIONAL COMMITTEE,  
*Intervenors.*

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On Petitions for Review of Orders of the  
Federal Communications Commission

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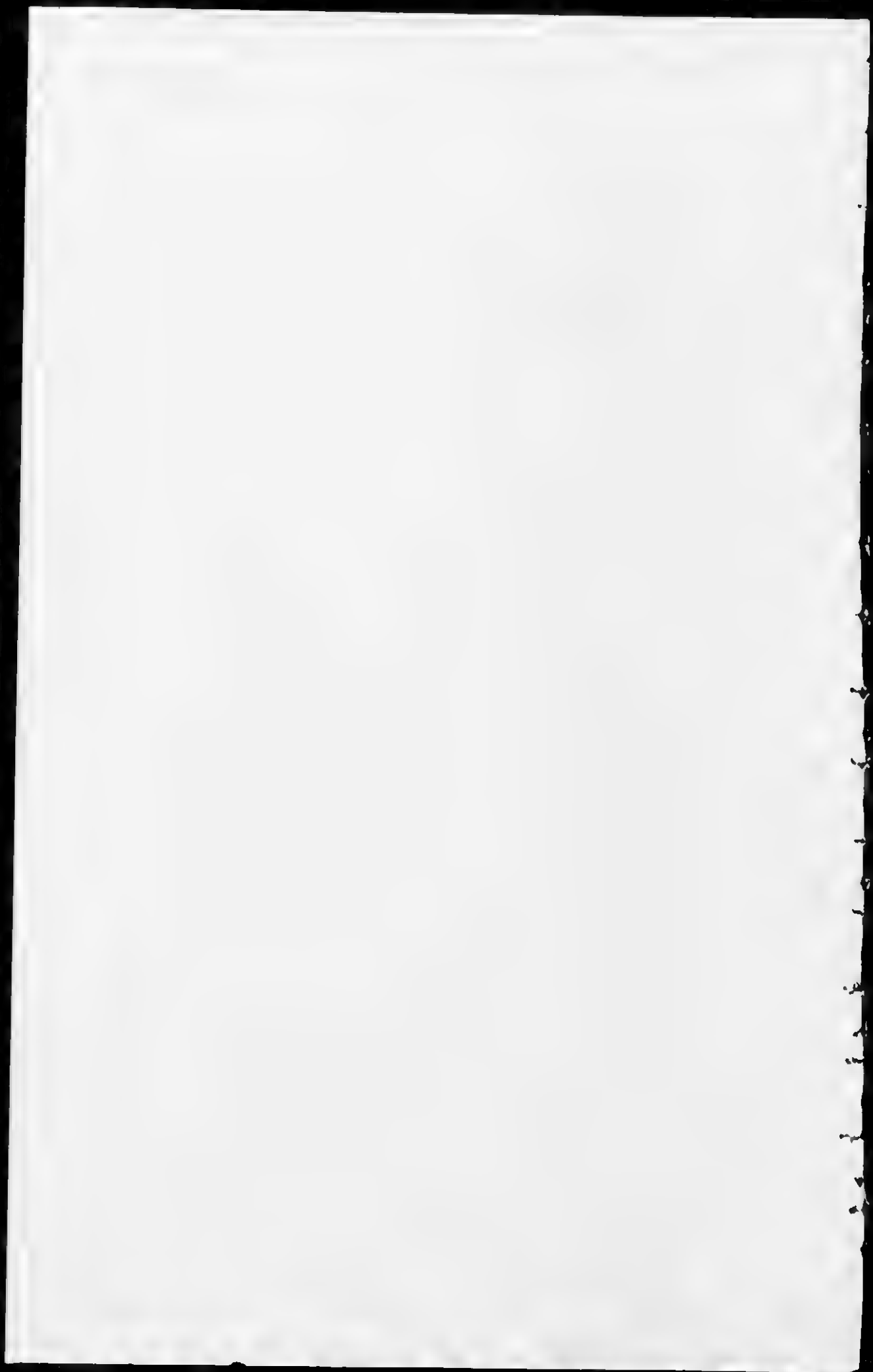
United States Court of Appeals  
for the District of Columbia  
**BRIEF FOR PETITIONER**  
**COLUMBIA BROADCASTING SYSTEM, INC.**

**FILED DEC 16 1970**

*Nathan J. Paulson*  
CLERK  
Of Counsel:

ROBERT V. EVANS  
RALPH E. GOLDBERG  
JOSEPH DEFRANCO  
51 West 52 Street  
New York, New York 10019

J. ROGER WOLLENBERG  
EZEKIEL G. STODDARD  
DANIEL MARCUS  
FRANK W. LLOYD, III  
WILMER, CUTLER & PICKERING  
900 - 17th Street, N.W.  
Washington, D.C. 20006  
*Counsel for Columbia  
Broadcasting System, Inc.*





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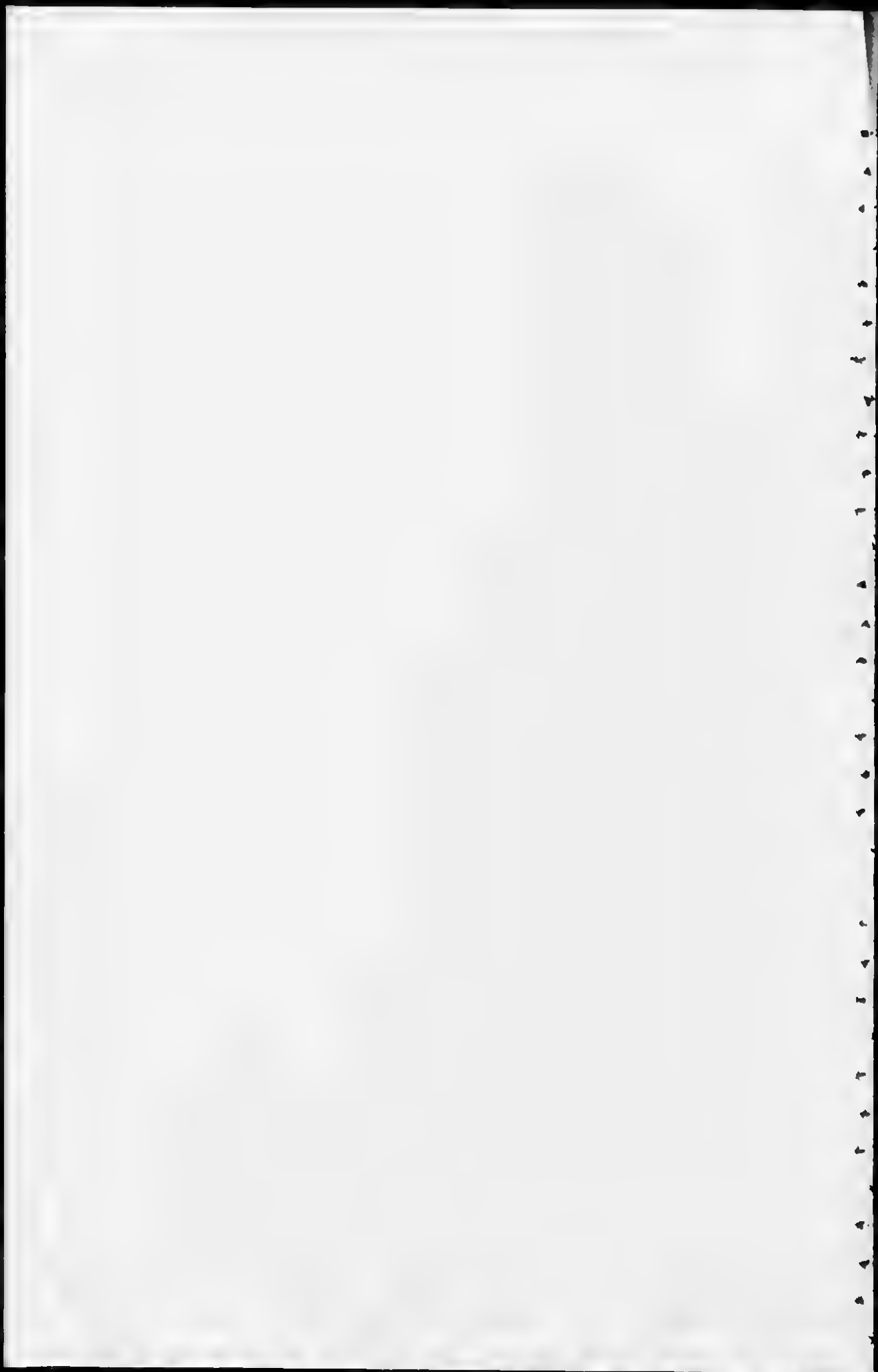
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On Petitions for Review of Orders of the  
Federal Communications Commission

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BRIEF FOR PETITIONER  
COLUMBIA BROADCASTING SYSTEM, INC.

---

ISSUES PRESENTED FOR REVIEW

The Federal Communications Commission has ruled  
that the presentation by CBS of a broadcast by the Chair-

man of the Democratic National Committee, setting forth views on public issues in response to views previously presented by the President in a number of broadcast appearances, requires that time be provided to a Republican Party spokesman for a reply to that response to the President.

The issues presented for review are:

1. Whether the ruling must be set aside as arbitrary and capricious because it is patently unfair, lacks any rational basis and constitutes an unexplained departure from a Commission precedent squarely in point.
2. Whether the ruling exceeds the authority of the Commission under the Communications Act of 1934, or, if it does not, whether the ruling violates the First Amendment.

[This case has not previously been before this Court.]

#### REFERENCES TO RULINGS

The basis for the orders of the Commission under review in this case is set forth in two opinions of the Commission:

Memorandum Opinion and Order released August 18, 1970 (FCC 70-881), ¶¶ 52-59 (A. 96-98).<sup>\*</sup> The portion of the August 18 Memorandum Opinion and Order under review is reported at 25 F.C.C. 2d 283, 299-301 (1970).

Memorandum Opinion and Order released September 24, 1970 (FCC 70-999) (A. 303-313), disposing of petitions for reconsideration of the August 18 Memorandum Opinion and Order. The September 24 Memorandum Opinion and Order is reported at 25 F.C.C. 2d 739 (1970).

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<sup>\*</sup> "A.——" references are to the Appendix of materials from the Record before the Commission, filed with this brief.

## STATEMENT OF THE CASE

This case tests the validity of a ruling of the Federal Communications Commission (the Commission) that petitioner Columbia Broadcasting System, Inc. (CBS) must afford time to a Republican Party spokesman to reply to a July 7, 1970 broadcast by Lawrence O'Brien, Chairman of intervenor Democratic National Committee (DNC). This broadcast, entitled "Loyal Opposition"—"THE DEMOCRATS RESPOND: PART ONE,"<sup>1</sup> was made at CBS' invitation as a response to previous Presidential broadcast appearances.

The factual setting of the July 7 O'Brien broadcast is critical to an understanding of the legal issues presented. We therefore first set forth the circumstances leading to the July 7 broadcast. We then describe the subsequent contentions made to the Commission and the rulings it has made in response.

### (a) The Background of the July 7 Broadcast

CBS is the licensee of a number of radio and television stations and operates a radio network and a television network. In these roles, CBS has sought to provide fair and balanced coverage of important public issues. The primary method employed to achieve this end is to present broadcasts prepared by CBS' own news personnel—hard news, news analysis, news documentaries, news specials, and news interviews.<sup>2</sup> As part of that coverage, CBS also carries press conferences, speeches and reports to the nation by the President of the United States. In addition, in the interest of fairness, CBS has from time

<sup>1</sup> A transcript of the July 7 broadcast appears at A. 23-31.

<sup>2</sup> CBS' policies as to coverage of public issues are set forth in some detail in a recent CBS response to a request to the Commission by DNC for a declaratory ruling. See Appendix to the Briefs in *Democratic National Committee v. FCC*, D.C. Cir. No. 24,537, pp. 37-44.



to time provided an opportunity for direct presentations by speakers advocating views opposed to Administration policies. For example, during both Democratic and Republican Administrations CBS has made time available, following the President's State of the Union Address, to Congressional leaders of the principal opposition party to present their views on the state of the union.<sup>3</sup>

During the first 18 months of the current Administration the President appeared on the CBS Television Network during prime evening viewing hours on 14 occasions.<sup>4</sup> Since such appearances, cumulatively, have a major impact on the viewing public and often present the views on important public issues of the political party the President leads, CBS decided it would be appropriate to offer time to representatives of the principal opposition party. Accordingly, on June 22, 1970, CBS offered the Chairman of DNC 25 minutes of broadcast time for the presentation of views of the Democratic Party on public issues. It did so in view of the "disparity between Presidential appearances and the opportunities available to the principal opposition party" in order to "achieve fairness and balance in the treatment of public issues."<sup>5</sup> The format and content of the presentation were left to Mr. O'Brien to fashion in conformity with the stated purpose of the offer. CBS did not prescribe which of the issues discussed by the President in prior broadcasts were or were not to be covered, the allocation of time to be made among such issues, or the spokesman to be used.

Mr. O'Brien accepted the CBS offer and the broadcast took place on July 7, 1970. The format employed involved presentation of excerpts of previously broadcast Presi-

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<sup>3</sup> CBS Response to Republican National Committee Petition (hereafter "CBS Response"), A. 38.

<sup>4</sup> *Id.* at A. 39, second footnote.

<sup>5</sup> Telegram from Frank Stanton, President of CBS, to Mr. O'Brien, June 22, 1970, A. 20.

dential statements on various issues, followed by critical commentary or rebuttal by Mr. O'Brien as to each Presidential statement.<sup>6</sup> Topics covered included the Indochina War, economic policy, dissent, crime, civil rights, and the environment.

Following the O'Brien broadcast, there were several minutes of analysis by members of the CBS News staff of the type that CBS customarily carries following Presidential broadcasts. In addition, a few CBS-affiliated stations, including the five CBS-owned television stations (but not the CBS Television Network), carried a paid political fund-raising announcement purchased by DNC directly from the stations.<sup>7</sup>

#### (b) The Initial Proceedings before the Commission

On July 8, 1970, the Chairman of the Republican National Committee (RNC) requested CBS to provide time to RNC comparable to that afforded for the July 7 broadcast.<sup>8</sup> Thereafter, on July 13, RNC filed with the Commission a petition requesting that "the Commission at its earliest convenience make its views known to CBS that their failure to afford forthwith" an opportunity to RNC

<sup>6</sup> These statements were drawn from the Inaugural and State of the Union addresses, news conferences, and special addresses on such matters as the Cambodian invasion and the veto of the HEW appropriations bill. Mr. O'Brien used Mr. Nixon's broadcast nomination acceptance speech to illustrate his views on the crime problem, but these views had also been expressed in television appearances since Mr. Nixon's inauguration. Mr. O'Brien also used a broadcast statement by Vice President Agnew to supplement a statement by President Nixon on the question of dissent and national unity. A, 23-30.

<sup>7</sup> See CBS Response, A. 36. The time for this announcement was sold by the CBS-owned stations pursuant to the CBS policy to permit the purchase of spot announcements for political fund-raising, described in the CBS response to a DNC request for a declaratory ruling. See Appendix to the Briefs in *Democratic National Committee v. FCC*, D.C. Cir. No. 24,537, pp. 43-44.

<sup>8</sup> Letter to Dr. Frank Stanton, RNC Petition, Exhibit 1, A. 17-19.

to reply to the July 7 broadcast "would constitute a violation of the Fairness Doctrine and CBS's obligations as a licensee of broadcast stations."<sup>9</sup>

In substance RNC argued that a national committee such as DNC was an inappropriate spokesman "to discuss specific political, economic and social issues—the 'gut issues.'"<sup>10</sup> RNC alleged that the result was a broadcast that became an "instrument of partisan advocacy" rather than an "issue-oriented response" to the President. Finally, RNC asserted that the July 7 broadcast had injected a "fresh issue not specifically treated by any Presidential speech: *which political party should hold power.*"<sup>11</sup> RNC argued that Mr. O'Brien's treatment of this "which party" issue gave rise to a duty on the part of CBS, under the Commission's fairness doctrine, to afford time for RNC to present the other side of the issue.<sup>12</sup>

CBS opposed the RNC request.<sup>13</sup> It pointed out, *inter alia*, that (1) RNC had conceded in the past that the fairness doctrine applies to Presidential broadcasts and that the national committee chairman of the principal opposition political party was an appropriate spokesman to reply to the President;<sup>14</sup> (2) the substantive issues covered in the July 7 broadcast had all been covered in Presidential broadcasts;<sup>15</sup> and (3) no showing had been

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<sup>9</sup> A. 11.

<sup>10</sup> A. 5. Some of RNC's arguments were repeated and amplified in a Reply to CBS' Response. A. 61-73.

<sup>11</sup> A. 4. (Emphasis in original.)

<sup>12</sup> A. 4-10.

<sup>13</sup> A. 32-60.

<sup>14</sup> CBS noted that the then Chairman of RNC had requested and received time in 1963 to respond to President Kennedy's televised discussion of tax legislation. A. 40-41.

<sup>15</sup> A. 34.

made of any lack of fairness in the overall treatment by CBS of any of these issues.<sup>16</sup>

With respect to the main RNC contention that the O'Brien broadcast introduced a "fresh issue" as to which party should govern, CBS answered that the President had addressed the "which party" issue in his prior broadcasts, noting that—

"Although Mr. O'Brien nowhere explicitly addressed the question of which party should hold the Presidency, it is arguable that any broadcast by the DNC will imply that a representative of the Democratic party should hold that office and that the "Loyal Opposition" broadcast did so. But if implicit messages are to be considered, it is equally true that a broadcast by the President—the Chief Executive of our government, as well as the leader of his party—will have as an underlying objective the desire to persuade the listener of the merits of the Administration's course of action. Certainly when the President speaks, he seeks to inspire confidence in his ability to govern and the wisdom of the Administration's policies and seeks to perpetuate his party's stewardship of the government."<sup>17</sup>

In sum, CBS pointed out that under the fairness doctrine the Commission does not weigh particular broadcasts and direct specific replies, but rather weighs overall fairness in treatment of issues. In the present case, CBS argued, RNC had failed to establish unfairness in CBS' treatment of any of the issues covered in the O'Brien broadcast, including any implicit issue as to "which party should govern."

#### (c) The August 18, 1970 Commission Ruling

On August 18, 1970, the Commission issued a Memorandum Opinion and Order disposing of a number of fair-

<sup>16</sup> *Ibid.*

<sup>17</sup> A. 34-35.

ness controversies, including the one raised by the RNC petition.<sup>18</sup>

The Commission concluded that "the fairness doctrine requires that some reasonable period of time be afforded by CBS to the RNC or some other appropriate Republican Party spokesman selected by CBS."<sup>19</sup> It agreed that "CBS has acted in good faith" in responding to a need for presenting viewpoints contrasting with those of the President and stated that CBS "is to be commended for its concern."<sup>20</sup> Nevertheless, the Commission held that CBS' asserted purpose was not achieved because the July 7 broadcast "only referred briefly to the Indochina War issue,"<sup>21</sup> which the Commission regarded as a principal focus of earlier Presidential broadcasts.

Without explaining the terms used, the Commission stated that the O'Brien broadcast "would appear to have been 'person or party' oriented rather than issue-oriented," and faulted CBS for failing "to have exercised journalistic supervision to assure fulfillment of its purpose."<sup>22</sup> Finally, the Commission concluded that the character of the broadcast somehow brought it within the ambit of the Commission's recent *Zapple* ruling,<sup>23</sup> which held that where a broadcast licensee has sold time to supporters of a particular candidate during an election period, he may not decline to sell equivalent time to supporters of that candidate's opponents.

The result as to the RNC petition was concurred in by 5 of the 7 Commissioners, but 3 of the 5 issued sepa-

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<sup>18</sup> A. 74-98 (hereafter "August 18 Opinion"). Part E of the August 18 Opinion, ¶¶ 52-59, A. 96-98, dealt with the RNC Petition.

<sup>19</sup> ¶ 53, A. 96.

<sup>20</sup> ¶ 54, A. 96.

<sup>21</sup> ¶ 55, A. 96.

<sup>22</sup> ¶ 55 n. 25, A. 96.

<sup>23</sup> *Letter to Nicholas Zapple*, 23 F.C.C. 2d 707 (1970).

rate statements reflecting widely disparate views.<sup>24</sup> Commissioner Robert E. Lee stressed an alleged failure of CBS to limit Mr. O'Brien "to the issues originally raised,"<sup>25</sup> but he did not identify the new issues he thought had been treated in the July 7 broadcast. Commissioner Lee also appeared to rest his conclusion in part on the selection of DNC as spokesman, contrary to the main opinion, which expressly rejected the RNC argument that national committees are inappropriate spokesmen to answer the President.<sup>26</sup>

The special concurring opinion of Chairman Dean Burch stressed the alleged "person or party" orientation of the O'Brien broadcast,<sup>27</sup> again without definition of that term, without any differentiation of it from an "issue-oriented" broadcast, and without citing any instances of "party-orientation" in the content of the broadcast. Chairman Burch asserted that the broadcast "covered issues in the political spokesman arena," but did not explain what he conceived that "arena" to be.<sup>28</sup>

Finally, Commissioner Nicholas Johnson stated that his concurrence was "extremely reluctant."<sup>29</sup> He concurred

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<sup>24</sup> Separate concurring statements concerning the RNC petition were issued by Chairman Dean Burch (A. 104-06), Commissioner Robert E. Lee (A. 107) and Commissioner Nicholas Johnson (A. 115-16). Commissioners Robert L. Bartley and H. Rex Lee dissented as to the result in the RNC petition, as well as all other issues resolved in the August 18 Opinion. Commissioner H. Rex Lee issued a short dissenting statement, A. 108.

<sup>25</sup> A. 107.

<sup>26</sup> August 18 Opinion ¶ 58, A. 97.

<sup>27</sup> A. 105.

<sup>28</sup> *Ibid.*

<sup>29</sup> A. 115. The reluctant nature of Commissioner Johnson's concurrence was underlined by his statement that "there is nothing in the majority's opinion to suggest that the RNC is entitled to anything more than a five minute reply under these circumstances." A. 116.

because of the "content of the DNC program,"<sup>30</sup> although he, like his brethren, did not point to the particular content that troubled him. Commissioner Johnson also expressed concern over a rule under which "the RNC must be given time to reply to the DNC every time the DNC is given time to reply to the Republican President."<sup>31</sup>

#### (d) Pleadings on Reconsideration

In petitioning for reconsideration,<sup>32</sup> CBS contended that the distinction between "party-oriented" and "issue-oriented" was not a meaningful or workable one. While conceding that the O'Brien broadcast was partisan, CBS contended that the broadcast had been devoted to vigorous discussion of specific issues. It pointed out that, contrary to the Commission's impression, CBS had not intended to limit the July 7 broadcast to the issue of the Indochina War and that CBS had fully presented the views of the President and other Republican spokesman—through direct presentations as well as on CBS News broadcasts—on all the other issues discussed by Mr. O'Brien on that broadcast.<sup>33</sup> CBS also pointed out that the Presidential broadcasts to which Mr. O'Brien replied had constituted "a strong endorsement of Republican [Party] government" and contained remarks "extolling the virtues of the Republican Administration and commenting unfavorably on the positions or actions of the previous Democratic Administration and the current

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<sup>30</sup> A. 116.

<sup>31</sup> *Ibid.*

<sup>32</sup> A. 218-270. DNC, which had not previously participated in the proceedings before the Commission, also filed a petition for reconsideration. A. 127-191.

<sup>33</sup> A. 221-22. CBS submitted an appendix detailing the discussion of these issues by Republican spokesmen by date, time, and content. A. 243-65.



Democratic-controlled Congress.”<sup>34</sup> CBS argued that it would be grossly unfair to require that time be provided for a reply by the President’s party to a reply to the President, since any such requirement would give the views of the President’s party double exposure.<sup>35</sup>

CBS also urged that the Commission’s decision could only lead to emasculation of future debate on public issues. In the future, CBS said, licensees would have to review all broadcasts presenting partisan figures on a line-by-line basis to eliminate partisanship. If they did not, they would run the risk that their attempt to bal-

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<sup>34</sup> A. 226-27. For instance, in his September 26, 1969 broadcast press conference, the President directly criticized the prior Democratic Administration, stating:

“[T]he previous administration tried, through jawboning, as it is called, to put the blame on business for price increases; the blame on labor for wage increases . . . . It [jawboning] is hypocritical, it is dishonest, but most important, it is ineffective . . . .” 5 Weekly Compilation of Presidential Documents (hereafter “WCPD”) 879 (1969).

In his 1970 State of the Union address, the President placed “the primary blame” for rising prices on the Federal Government’s deficit spending “in the decade of the sixties,” contrasting this with his own budget practices and plans. 6 WCPD 61 (1970). In that address, he also stated:

“We have heard a great deal of overblown rhetoric during the sixties in which the word ‘war’ has perhaps too often been used—the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word ‘war’ is appropriate it is in the fight against crime.” 6 WCPD 62 (1970).

Again, in his June 17, 1970 speech on economic policy, President Nixon emphasized that his Administration was seeking to reverse the pattern of deficit spending and “runaway inflation” that prevailed under his Democratic predecessors. 6 WCPD 779 (1970).

Remarks critical of the alleged inaction or over-spending of the Democratic-controlled Congress were also made in the latter two broadcasts, as well as in the President’s HEW appropriations bill veto message (6 WCPD 76, January 26, 1970) and December 8, 1969 press conference. 5 WCPD 1724-25 (1969). For other examples of partisan Presidential statements, see A. 227-31.

<sup>35</sup> A. 239-40.

ance debate on public issues would be frustrated by a Commission determination like the one in this case.<sup>36</sup>

Finally, the CBS petition cited a precedent—the *Hays* decision<sup>37</sup>—that it asserted was controlling. In the *Hays* case CBS had denied a request by a Democratic spokesman for an opportunity to reply to a Republican response to the 1968 State of the Union address of President Johnson. The Commission rejected a Democratic complaint that CBS had violated the fairness doctrine in refusing to provide time for a second Democratic broadcast. The CBS petition for reconsideration in the present case pointed out that the Republican response to the President involved in the *Hays* case was at least as partisan, in content and tone, as the July 7 O'Brien broadcast.<sup>38</sup>

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<sup>36</sup> The DNC petition for reconsideration argued that Presidential use of television had created a serious imbalance and that the partial redress of that imbalance through the O'Brien broadcast would be vitiated by an RNC reply to that broadcast. A. 133-42. It expressed a fear that the networks would be inhibited from carrying such DNC broadcasts in the future or would censor them to avoid the effects of the Commission's ruling. A. 130-31.

<sup>37</sup> *Letter from Chairman Rosel H. Hyde to Hon. Wayne Hays*, Commission Ref. No. 8330-S; C2-105 (1968), reprinted at A. 237-39.

<sup>38</sup> For example, Representative Gerald Ford, the House Republican leader, stated as part of a lengthy speech questioning President Johnson's leadership capability:

"The Ship of State is wallowing in a storm-tossed sea, drifting toward the rocks of domestic disaster, beaten by the waves of worldwide fiscal crisis that threaten shipwreck . . . We need a Captain with courage to clear the deck—jettison the dead-weight—a Captain who learned his seamanship beyond the Potomac and the Pedernales."

Representative Poff, speaking on the "law and order" record of the Democratic Administration, stated:

"Murder is epidemic. Rape is commonplace—Burglary happens so often it is no longer news. Pornography, filth and dope are peddled on nearly every street corner. Crime has grown six times as fast as the population.

Despite the urgent warnings of F.B.I. Director Hoover and law enforcement officers everywhere, the Johnson Administra-

The RNC opposition to the CBS petition for reconsideration<sup>39</sup> stated that the "fundamental defect" of the CBS petition was "its refusal to recognize or accept the Commission's well-supported factual conclusion that the DNC broadcast of July 7, 1970, was partisan rather than issue-oriented and that it was that factor alone which brought the July 7 broadcast within the 'political spokesman arena' of the Fairness Doctrine."<sup>40</sup> RNC asserted that "the Commission has made clear" that the question of whether a broadcast is "party-oriented" turns "on the form and content of the discussion itself."<sup>41</sup> It denied CBS' contention that Presidential addresses had any similarly partisan element.<sup>42</sup> RNC urged that the *Hays* ruling, on which CBS had relied, was simply erroneous.<sup>43</sup>

(e) The Commission's September 24, 1970 Ruling

On September 24, 1970, the Commission released a Memorandum Opinion and Order denying by a 4 to 2 vote the petitions of CBS and DNC for reconsideration.<sup>44</sup>

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tion has failed to take effective action. The Attorney General has banned the use of modern investigative techniques. The soaring increase in crime has been called just 'a little bit' of an increase."

In other segments of the broadcast, Representative Bush assailed the Administration's "reckless policy" of deficit spending, while Senator Tower stated that "this war could be over today if the Johnson Administration had acted with determination instead of vacillation." See A. 234-36.

<sup>39</sup> A. 271-79.

<sup>40</sup> A. 271.

<sup>41</sup> A. 277.

<sup>42</sup> A. 274-75.

<sup>43</sup> A. 274.

<sup>44</sup> A. 303-13 (hereafter "September 24 Opinion"). Commissioner Cox, who concurred in the August 18 Opinion, had since left the Commission. Commissioner Johnson concurred in the result. Commissioner Bartley wrote a short dissenting statement. A. 314.

The Commission conceded that its ruling that the July 7 broadcast gave rise to reply-to-reply rights "did not take into account the overall presentations of CBS on the issues covered in the July 7 DNC broadcast, and . . . did not follow the general fairness doctrine pattern."<sup>45</sup> The ruling was founded, rather, on a "specific corollary" of the fairness doctrine—a new "political party" doctrine derived by the Commission from its *Zapple* ruling.<sup>46</sup>

The Commission asserted that both CBS and DNC had misconstrued the August 18 Opinion.<sup>47</sup> Particularly, the Commission denied any intent to base the ruling on the partisan content of the July 7 broadcast or the partisan nature of the spokesman appearing on the broadcast. It stated that, in informing the public on issues raised in Presidential broadcasts, "CBS has wide discretion as to the spokesmen to be selected (including the DNC if it wishes) and . . . the presentation can be hard-hitting and partisan."<sup>48</sup> The Commission explained that the "party-oriented" nature of the broadcast giving rise to a reply right for a Republican spokesman resulted solely from the fact that CBS had not specified the particular issues to be covered in the July 7 broadcast.<sup>49</sup>

The Commission reaffirmed the *Hays* ruling (under which a Republican response to a Democratic State of the Union address was held not to give rise to a reply right for the Democrats), evidently regarding it as distinguishable from the present case—although no basis for

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<sup>45</sup> ¶ 11, A. 308.

<sup>46</sup> ¶¶ 11-14, 21, A. 308-09, 311.

<sup>47</sup> ¶ 10, A. 307.

<sup>48</sup> ¶ 23, A. 312.

<sup>49</sup> ¶ 21, A. 311. While apparently recognizing that CBS had not intended to restrict Mr. O'Brien to the Indochina War issue, the Commission nonetheless again indicated its view that CBS, "first and foremost," should have offered "time to speak on Indochina" in response to the President. ¶ 20, A. 311.

distinction was stated.<sup>50</sup> While recognizing that Presidential appearances constitute "a strong endorsement of Republican [Party] government,"<sup>51</sup> the Commission held that such appearances would not normally be deemed to come within the "political party" doctrine described in its holding.<sup>52</sup> But the Commission held, nonetheless, that—except where the licensee prescribes the particular issues to be discussed—the broadcast of a reply to exempt Presidential appearances requires, under the "political party" doctrine, that the President's party be afforded a second chance at persuading the public that the President's views are correct.

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<sup>50</sup> ¶ 22 n. 16, A. 312.

<sup>51</sup> ¶ 18, A. 310.

<sup>52</sup> *Ibid.* The Commission indicated that the only exception to this would be when the President is a formal candidate for reelection, in which case the "equal opportunities" requirement of section 315—or, should that requirement be repealed, the "political party" doctrine itself—would apply. ¶ 16, A. 310.

## ARGUMENT

In the holding under review, the Commission—acting in the name of fairness—has decreed a result that is patently unfair: It has held that the presentation by CBS of a single, 25-minute broadcast by the Chairman of DNC, in which he set forth his party's views in response to views previously presented by the President in extensive broadcast appearances, requires that CBS offer time to RNC or some other Republican Party spokesman for a reply to a reply. The Commission has thus required CBS to provide the Republicans an opportunity to present again Administration views on national issues that have previously been presented in numerous Presidential broadcast appearances. The Commission has failed to provide any intelligible reason for this remarkable departure from its own fairness doctrine.

On its face, the Commission's holding seems a strange way of resolving the questions raised by Presidential broadcast appearances. We demonstrate below that the reasons advanced by the Commission in support of this unprecedented holding do not support the result reached. The Commission's holding simply fails to meet the minimal requirement for valid agency action—it lacks any rational basis. For this reason alone, it must be set aside under established legal principles. Moreover, the result has no relationship to the policies of the Commission's fairness doctrine, but is actually contra-fairness. It cannot be justified under the fairness doctrine or any provision of the Communications Act, and is therefore beyond the Commission's statutory authority. Finally, since the ruling amounts to a governmental requirement that one set of views on national issues be given greater exposure than opposing views, it is inconsistent with the First Amendment.

**I. The Commission's Requirement that CBS Afford Reply-to-Reply Rights to a Republican Party Spokesman Must Be Set Aside for Lack of Any Rational Basis.**

Under applicable standards for judicial review, agency action lacking a rational basis cannot be sustained. Section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 706, codifies the long-standing rule that the courts shall "hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." While the exact bounds of the concept of arbitrary and capricious administrative action are not precisely defined, the core of the concept is the notion of irrationality.<sup>53</sup>

We show below that the decision in the instant case fails to meet this threshold standard of rationality.

**A. The Holding Has No Basis in the Commission's Traditional Fairness Doctrine.**

In the July 7 broadcast at issue, Mr. O'Brien—who the Commission concedes is an appropriate spokesman to

<sup>53</sup> *E.g.*, *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962) (there must be a "rational connection between the facts found and the choice made"); *Greater Boston Television Corp. v. FCC*, — U.S. App. D.C. —, — F.2d — (No. 17,785, Nov. 13, 1970), slip opinion at 16 (court must be satisfied that fact findings "provide rational support for the agency's inferences of ultimate fact"); *FTC v. Crowther*, — U.S. App. D.C. —, 430 F.2d 510, 514 (1970); *Paducah Newspapers, Inc. v. FCC*, 134 U.S. App. D.C. 287, 288, 414 F.2d 1183, 1184 (1969) (agency actions must be "rationally explicable" and "consistent"); *Van Curler Broadcasting Corp. v. United States*, 98 U.S. App. D.C. 432, 435, 236 F.2d 727, 730, *cert. denied*, 352 U.S. 935 (1956) (reasons given by agency found to be "rational" and to "support the conclusion" reached); *Grace Line, Inc. v. Federal Maritime Board*, 263 F.2d 709, 711 (2d Cir. 1959) (court must be satisfied that agency decision has a "rational" or "reasonable" foundation in law); *Willapoint Oysters, Inc. v. Ewing*, 174 F. 2d 676, 695 (9th Cir.), *cert. denied*, 338 U.S. 860 (1949) (courts inquire "whether the order is a rational conclusion and not so 'unreasonable' as to be capricious, arbitrary or an abuse of discretion"); *Dell Pub. Co. v. Summerfield*, 198 F. Supp. 843, 844 (D.D.C. 1961), *aff'd*, 113 U.S. App. D.C. 1, 303 F.2d 766 (1962) ("arbitrary and capricious" means "having no rational basis").



respond to the President on public issues<sup>54</sup>—presented views on a number of public issues previously discussed by the President on CBS broadcasts. These issues included the Indochina War, economic policy, dissent, crime, civil rights, and the environment.

The Commission concedes that CBS has fully and fairly presented all sides of the substantive issues actually discussed by Mr. O'Brien.<sup>55</sup> While the Commission expressed concern that CBS had not limited the July 7 broadcast to a discussion of the issue of the Indochina War,<sup>56</sup> it did not find—and on this record could not have found—that the July 7 broadcast resulted in any imbalance in CBS' coverage of issues.

Even if one focuses, as RNC's petition urged,<sup>57</sup> on the implicit issue of "which party should govern," it is clear that the Republican side of the issue had previously been presented fully on CBS broadcasts. The appearances of the President, the chief spokesman of the Republican Party, contained many remarks directly attacking the performance of the Democratic-controlled Congress and his Democratic predecessors.<sup>58</sup> Their overall effect was a strong endorsement of the Republican Administration and its policies.

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<sup>54</sup> September 24 Opinion ¶¶ 22, 23, A. 312; August 18 Opinion ¶ 58, A. 97.

<sup>55</sup> September 24 Opinion ¶ 14 n. 13, A. 309.

<sup>56</sup> August 18 Opinion ¶ 55, A. 96. September 24 Opinion ¶ 20, A. 311. It was because of this apparent concern that CBS submitted with its petition for reconsideration an exhibit showing that the views of the President and other Republican spokesmen on all the issues discussed by Mr. O'Brien had been extensively presented on CBS broadcasts. A. 243-65.

<sup>57</sup> A. 3. As suggested in the CBS petition for reconsideration, A. 226-31, it is pointless to focus on so broad an issue as "which party should govern" for fairness doctrine purposes; views on that issue are presented, explicitly or implicitly, in almost every appearance of every public or party official.

<sup>58</sup> See pp. 10-11, *supra*.

Under these circumstances, it is clear that CBS had fully satisfied its obligations under the fairness doctrine as traditionally stated and applied. That doctrine requires, basically, that where a broadcast licensee carries one side of a controversial issue of public importance, he must also afford reasonable coverage to the other side or sides of that issue. The fairness doctrine is not a rigid, mechanical formula. The controlling standard under the doctrine is whether the licensee, in its overall performance over a period of time, has acted "reasonably and in good faith."<sup>59</sup> As the Commission stated in the very opinion in which it decided this case:

"We do not believe that any extended discussion is needed as to why the licensee is afforded so much discretion under the fairness doctrine. In our judgment, based on decades of experience in this field, this is the only sound way to proceed as a general policy. A contrary approach of equal opportunities, applying to controversial issues generally the specific equal opportunities requirements for political candidates would in practice not be workable. It would inhibit, rather than promote, the discussion and presentation of controversial issues in the various broadcast program formats (e.g., newscasts, interviews, documentaries). For it is just not practicable to require equality with respect to the large number of issues dealt with in a great variety of programs on a daily and continuing basis. Further, it would involve this Commission much too deeply in broadcast journalism; we would indeed become virtually a part of the broadcasting 'fourth estate,' overseeing thousands of complaints that some issue had not been given 'equal treatment.' We do not believe that the profound national commitment to the principle that debate on public issues should be 'unin-

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<sup>59</sup> *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10415, 10416 (1964). See generally August 18 Opinion, Part A (¶¶ 21-29), A. 85-88.

hibited, robust, wide-open' (*New York Times Co. v. Sullivan*, 376 U.S. 254, 270) would be promoted by a general policy of requiring equal treatment on all such issues, with governmental intervention to insure such mathematical equality."<sup>60</sup>

The Commission's ruling, requiring that time be afforded for a Republican reply to the July 7 broadcast, flies in the face of these often-stated principles of the fairness doctrine. It is, indeed, contra-fairness. The entire purpose of the July 7 broadcast, in conjunction with other CBS news and public affairs broadcasts, was to maintain balance in the treatment of issues on which the President had expressed his views in his frequent broadcast appearances. The Commission's ruling nullifies this CBS effort to provide balance. Unless reversed, the ruling will create a governmentally-compelled imbalance. Notwithstanding the impact of Presidential appearances, the President's party, under the Commission's holding, must be afforded still another opportunity to present the Administration's views. This is a result directly contrary to the spirit and purpose of the fairness doctrine.<sup>61</sup>

**B. The Application of the Commission's "Political Party" Rule, Based on Whether the Licensee Has Specified the Issues to be Discussed, Is Fundamentally Irrational.**

The Commission has conceded that its action "did not take into account the overall presentations of CBS on the issues covered in the July 7 DNC broadcast, and . . . did

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<sup>60</sup> August 18 Opinion ¶ 24, A. 86. (Footnote omitted.)

<sup>61</sup> In a recent equal opportunities ruling reviewed by this Court, the Commission was at pains to assure the Court that the fairness doctrine would be used to prevent "imbalance" in coverage of views of opposing parties resulting from coverage pursuant to equal opportunities requirements. And this Court specifically accepted the assurance. *Kay v. FCC*, — U.S. App. D.C. —, — F.2d — (No. 24,495, Oct. 28, 1970), slip opinion at 20. In the present case, as shown above, the Commission's action commands imbalance.

not follow the general fairness doctrine pattern."<sup>62</sup> It was based, rather, on a "specific corollary" of the fairness doctrine—the so-called "political party" rule.<sup>63</sup> The Commission held that the July 7 broadcast was "party-oriented" rather than "issue-oriented," and that under the "political party" rule, substantially equal time must therefore be provided for a "party-oriented" response by RNC or some other Republican spokesman.

As discussed above,<sup>64</sup> the reasoning underlying the Commission's "party-orientation" holding in its first opinion—the August 18 Opinion—was unclear. In its September 24 Opinion, the Commission stated that CBS' interpretation of the initial opinion as turning on the content or tone of the July 7 broadcast was "astonishing."<sup>65</sup> Denying that the tone or content of the July 7 broadcast had anything to do with the "party-orientation" holding, the Commission asserted a commitment to hardhitting, partisan debate as an appropriate means of covering opposing views on controversial public issues.<sup>66</sup> Similarly, it reiterated that the Chairman of DNC was an appropriate spokesman for CBS to select to respond to the President on national issues.<sup>67</sup> What then gave the July 7 broadcast its fatal taint of "party-orientation" that generated a reply-to-reply right for the Republicans?

<sup>62</sup> September 24 Opinion ¶ 11, A. 308. See ¶ 13 n.13, A. 309.

<sup>63</sup> *Id.* at ¶¶ 11-14, 21, A. 308-09, 311.

<sup>64</sup> Pp. 7-10, *supra*.

<sup>65</sup> ¶ 22, A. 311. See also ¶ 10, A. 307, stating that CBS and DNC "misconstrued" the initial ruling. This "astonishing" misconstruction of the Commission's initial opinion was shared by all parties to the proceeding. Thus, for example, RNC, in opposing CBS' petition for reconsideration and defending the Commission's August 18 Opinion, stated that "the Commission has made clear" that the question of whether a broadcast is "party-oriented" turns "on the form and content of the discussion itself." See p. 13, *supra*.

<sup>66</sup> ¶¶ 22, 23, A. 312.

<sup>67</sup> *Ibid.*

The "party-orientation" holding was rested on an entirely new ground, not mentioned in the Commission's first opinion. The case turned, the Commission now held, on the fact that CBS had failed to specify the particular issues to be discussed—that CBS had turned over the time to DNC "for whatever use it might want to make of it."<sup>68</sup> Apparently, if CBS had prescribed in advance the very issues Mr. O'Brien actually discussed, the "orientation" of the broadcast would somehow have been fundamentally different. Although the same in content and tone, the broadcast would then, magically, have been "issue-oriented" instead of "party-oriented," and no reply-to-reply rights would have arisen.<sup>69</sup>

We submit that the Commission's new ground for decision is irrational. Whether the issue is viewed as one of fairness on the substantive issues discussed or equality of opportunity as between political parties, there is no discernible relationship between the existence of instructions to a party spokesman as to the specific issues he should discuss and the fairness of the coverage achieved. Whether or not fairness has been achieved depends upon what has actually been broadcast. A partisan discussion of issues is not made more "party-oriented" if the issues actually discussed on the broadcast have been selected by the party spokesman or less "party-oriented" if the broadcaster has selected the issues. Thus, the Commission failed to furnish any link between the fact found—that CBS did not specify particular issues—and the conclusion

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<sup>68</sup> ¶ 21, A. 311.

<sup>69</sup> This new ground of decision contrasts sharply with the Commission's assumption in its first opinion that CBS had intended Mr. O'Brien to speak on the issue of the Indochina War and had simply failed to supervise the broadcast to ensure that he stuck to that subject. August 18 Opinion ¶ 55, A. 96. This earlier assumption had to be abandoned by the Commission after CBS pointed out in its petition for reconsideration that its intent had not been so limited and showed that the President's prior appearances were by no means limited to the Indochina War issue. See p. 10, *supra*.

reached—that the July 7 broadcast was therefore “party-oriented.”

Quite apart from its intrinsic irrationality, the Commission’s new ground for decision provides no basis for distinguishing the July 7 O’Brien broadcast from other partisan broadcasts in response to Presidential addresses, discussed below, that have been held not to give rise to reply-to-reply rights.

**C. The Holding in this Case Is Irreconcilable with the Commission’s Ruling in the *Hays* Case.**

The holding that the July 7 broadcast was “party-oriented” because CBS failed to specify the issues to be discussed does not afford any basis for distinguishing other instances in which partisan replies to the President have been broadcast without triggering reply-to-reply rights. In 1968, CBS carried, in response to President Johnson’s State of the Union address, a broadcast by Republican Congressional spokesmen at least as “partisan” in content and tone as the July 7 O’Brien broadcast at issue here.<sup>70</sup> But the Commission held, in its *Hays* ruling,<sup>71</sup> that the broadcast of the Republicans’ response did not give rise to any reply-to-reply rights for a Democratic spokesman. In that ruling, it rejected a complaint by a Democratic Congressman seeking to require that time for such a reply to a reply be afforded.

The Commission does not purport to overrule *Hays* in this case; to the contrary, it cites *Hays* with approval<sup>72</sup> in the apparent belief that that decision somehow can be reconciled with the decision here.<sup>73</sup> The Commission’s

<sup>70</sup> See pp. 12-13, *supra*.

<sup>71</sup> Letter from Chairman Rosel H. Hyde to Hon. Wayne L. Hays, Commission Ref. No. 8330-S; C-2105 (1968), reprinted at A. 237-39.

<sup>72</sup> September 24 Opinion ¶ 22 n.16, A. 312.

<sup>73</sup> In this respect the Commission disagrees not only with CBS but also with RNC. In its Opposition to CBS’ petition for re-

opinion, however, fails to articulate the basis of reconciliation.

The two holdings certainly cannot be reconciled in terms of the "specification of issues" test the Commission has applied to the July 7 broadcast.<sup>74</sup> Any "limitation" on the issues to be discussed by the Republican Congressional leaders in the *Hays* case was of the most general nature. The state of the union, after all, is an arena that encompasses virtually every major issue of national concern, including the implicit issue of which party should govern. Thus, President Johnson's State of the Union address in 1968 (an election year) covered a wide range of national issues, including the Vietnam War, relations with the Soviet Union, national defense, foreign aid, employment, urban development, housing, medical care, consumer protection, crime and law enforcement, agriculture, air safety, pollution, civil rights, taxes, budgetary policy, balance of payments, and the state of the economy.<sup>75</sup> In inviting the Republican Congressional leaders to respond to that address, CBS did not specify which of the many issues treated by the President should be covered (or require the Republicans to reply on all of those issues); nor did it attempt to dictate the proportionate amount of time that ought to be devoted to any particular issue.

To say that in the *Hays* situation the Republicans had been "limited" to the issues discussed in the State of the Union message, then, is to say really that they were free to discuss all—or some—of the basic issues of the day,

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consideration, RNC admitted that *Hays* was squarely in point, but argued that it had been wrongly decided and would be decided differently today. A. 274.

<sup>74</sup> In our petition for reconsideration (A. 234-39) we showed that the *Hays* case could not be distinguished on the basis of the partisan tone or content of the broadcast involved. See pp. 12-13, *supra*.

<sup>75</sup> 4 WCPD 70-80 (1968).



and that they could devote as much time to any particular issue as they saw fit—regardless of the relative emphasis on that issue in the President's address.

If the issues to be discussed by the Republican Congressional spokesmen in *Hays* are to be viewed as having been "limited," then there was just as meaningful a "limitation" of the issues to be discussed in the instant case. While the format of the July 7 broadcast was not specified by CBS, it is clear from Dr. Stanton's telegram to Mr. O'Brien that time was being afforded as part of CBS' policy "to achieve fairness and balance in the treatment of public issues," in the light of "broadcast appearances of representatives of the party in office," particularly the President.<sup>76</sup> Certainly Mr. O'Brien so understood the telegram. For the July 7 broadcast was devoted entirely to responses to the President on specific national issues discussed by the President in his prior broadcast appearances.<sup>77</sup>

Thus, the Commission has failed to distinguish the *Hays* case—a precedent squarely in point—or to provide any intelligible reason for departing from it. For this reason alone, the Commission's decision cannot stand.

While an administrative agency is not irrevocably bound to a precedent, departure from a prior decision which has been squarely presented to the agency requires either that the decision be overruled on some intelligible basis or that it be meaningfully distinguished. As both the Supreme Court and this Court have emphasized, agency action should not be affirmed where the agency "has not adequately explained its departure from prior norms and has not sufficiently spelled out the legal basis of its decision." *Secretary of Agriculture v. United States*, 347 U.S. 645, 653 (1954); *FTC v. Crowther*, — U.S. App. D.C.—, 430 F.2d 510, 514 (1970). As this Court only

<sup>76</sup> A. 20-21.

<sup>77</sup> See pp. 5, 18, *supra*.

recently stated in *Greater Boston Television Corp. v. FCC*, — U.S. App. D.C. —, — F.2d — (No. 17,785, Nov. 13, 1970), slip opinion at 21:

“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.” (Footnotes omitted.)

Moreover, as this Court has emphasized, the Commission “must explain its reasons and do more than enumerate factual differences, if any, between . . . [similar] cases; it must explain the relevance of those differences to the purposes of the Federal Communications Act.” <sup>78</sup>

It is clear under the above authorities that, having been presented with the seemingly similar situations in *Hays* and the instant case, the Commission was required to demonstrate logically and convincingly how dissimilar treatment of the two cases was justified. We have shown that *Hays* is indistinguishable from the case at bar, even on the basis of licensee prescription of issues. Moreover, even if the cases could be distinguished on the theory that the issues were delineated by CBS with adequate specificity in *Hays* but not in the present case, the Commission has failed to suggest any conceivable purpose of the Communications Act that is served by the different treatment of the two cases.

**D. The Commission's Ruling Finds No Support in Any Policy of Equal Opportunities for Political Parties.**

Finally, the Commission's new ground of decision has no relation whatever to the reasoning and policy under-

<sup>78</sup> *Melody Music, Inc. v. FCC*, 120 U.S. App. D.C. 241, 244, 345 F.2d 730, 733 (1965). See also *Burinskas v. NLRB*, 123 U.S. App. D.C. 143, 148, 357 F.2d 822, 827 (1966).

lying the recent ruling, *Letter to Nicholas Zapple*, 23 F.C.C.2d 707 (1970), upon which the Commission places principal reliance.

In *Zapple* the Commission held that where, in an election campaign context, a station sells time to a supporter of a particular candidate, it cannot refuse to sell time to supporters of his opponents. *Zapple* thus promulgated a quasi-equal opportunity doctrine, designed for the limited purpose of ensuring that the spirit of the statutory equal opportunity requirement of Section 315 of the Act as to *candidates* for public office is not frustrated by discrimination in the sale of time to their *supporters* during an election campaign.

We submit that neither the *Zapple* ruling nor its underlying equal opportunities rationale supports the Commission's holding in this case that unequal double exposure must be given to one party—the President's party. The broadcast held here to trigger application of *Zapple* was itself a response to broadcasts by the leading spokesman for the opposition party—the President.<sup>79</sup> *Zapple* has thus been misused here to create a governmentally-imposed imbalance and to nullify CBS' efforts to achieve balance.

The Commission seeks to justify this inequitable result on the ground that Presidential broadcast appearances are to be accorded unique treatment. While admitting that the President's appearances have constituted "a strong endorsement of Republican [Party] government,"<sup>80</sup> the Commission holds that since the President is also the

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<sup>79</sup> Moreover, the July 7 broadcast did not occur during any national election campaign; nor did it urge the election of any particular candidate or candidates.

<sup>80</sup> September 24 Opinion ¶ 18, A. 310. As the Commission stated, "the President clearly does that, when he explains to the nation his course of action and why he believes it best serves the national interest." *Ibid.*

head of state and government, the *Zapple* or "political party" doctrine is inapplicable to his broadcast appearances.<sup>81</sup>

We agree with the Commission that it would be inappropriate and impractical to apply the "political party" doctrine to Presidential appearances in which the President does not appear as a supporter of candidates. What the Commission fails to recognize, however, is that it is therefore equally inappropriate, and grossly unfair, to apply the doctrine to *bona fide* replies to such Presidential appearances, such as the July 7 O'Brien broadcast.

*Zapple* can be rationally applied, it would seem evident, only to situations in which the result is to promote equal opportunity for opposing political spokesmen. Since the Commission does not apply the rule to Presidential appearances that contain explicitly partisan remarks and constitute "a strong endorsement of Republican [Party] government," it cannot be fairly applied to responsive broadcasts on the very national issues discussed in those Presidential appearances. To hold, as the Commission has, that the fairness doctrine makes occasional replies to the President appropriate, but that the "political party" doctrine compels creation of a new imbalance, is to give

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<sup>81</sup> The only exception recognized by the Commission is when the President appears as a candidate for reelection. September 24 Opinion ¶ 16, A. 310. The Commission does not discuss at all the status of appearances by the President as a spokesman for his Party's candidates in a Congressional election campaign—such as the recent vigorously fought campaign, in which the President played a conspicuous part. On November 2, 1970, the night before the Congressional elections were held, a paid Presidential appearance on behalf of Republican candidates was balanced by the major networks by presenting a paid presentation on behalf of Democratic candidates by Senator Muskie. See *New York Times*, November 3, 1970, p. 1, col. 7. Under the ruling in this case, however, since the President is exempt from the "political party" rule and since the networks did not specify the issues to be discussed by Senator Muskie, the Republicans presumably would have been entitled to purchase time to respond to Senator Muskie—thus giving them double exposure.

a new and wholly irrational dimension to the fairness doctrine.

Significantly, the factor cited by the Commission as decisive in the present case—that CBS did not dictate to Mr. O'Brien the specific issues he should discuss—is a factor not reflected in the language of the *Zapple* decision or in its basic rationale.<sup>82</sup> There is not the slightest indication in *Zapple* that its application would turn on the question of whether or not the licensee had, in the first instance, specified the substantive issues to be discussed. If in a campaign context a licensee sold time to a political party spokesman in support of a particular candidate, surely that licensee could not avoid application of the *Zapple* ruling by specifying the issues to be discussed by that spokesman. For the same reasons, if Mr. O'Brien was an appropriate spokesman to respond to the President on national issues (as the Commission concedes), and if the partisan tone or content of his broadcast was irrelevant (as the Commission also concedes), we cannot understand why his broadcast gave rise to a Republican reply-to-reply right because CBS did not expressly tell him what issues to discuss, but would have given rise to no such right if CBS had expressly specified the issues.

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<sup>82</sup> The irrationality of the "specification of issues" test is emphasized by the fact that it provides no basis for distinguishing between the July 7 broadcast and Presidential appearances to which the "political party" doctrine does not apply. The plain fact is that there are not any real limitations on the President's choice of issues that he believes are important to discuss in his broadcast appearances. In broadcast press conferences, of course, the network has no way of knowing what issues will be discussed. And in situations where the President requests prime time for reports to the nation or other appearances, the only "control" that the networks can exercise is purely negative and largely theoretical.

**II. In Reaching a Result that Cannot Be Justified under the Fairness Doctrine, the Commission Has Exceeded Its Powers under the Communications Act and Abridged First Amendment Rights.**

Quite apart from the irrationality of the Commission's decision, discussed above, the decision violates the First Amendment and is beyond the Commission's power under the Communications Act.

The Commission's ruling in the case at bar has precisely the kind of effect that the First Amendment condemns: By imposing a governmental requirement that CBS provide a Republican spokesman another opportunity to present views previously presented by the President in his numerous broadcast appearances, the ruling results in favored exposure of the views of one party over those of another. The Government is constitutionally required to be neutral as between competing points of view. See, e.g., *Fowler v. Rhode Island*, 345 U.S. 67 (1953); *Niemotko v. Maryland*, 340 U.S. 268 (1951). In promulgating a ruling the effect of which is to depart from that neutrality and to require double exposure of the views of one party, the Commission has transgressed the First Amendment.

Moreover, the ruling would effectively preclude the possibility of licensees adopting a policy that from time to time provides an opportunity to spokesmen for the party in opposition to respond to Presidential broadcasts, without dictating which of the particular issues covered by the President may be discussed. To avoid the undesirable consequence of having to present an unbalancing reply to a reply, licensees would undoubtedly turn to such a policy of prescription of issues. This would effectively require licensees to engage in a process that would interfere with the effective presentation of views by political spokesmen selected to respond to the President.

What constitutes an adequate specification of the issues is by no means clear, as shown by the Commission's cryptic treatment of the *Hays* case,<sup>83</sup> in which the issues to be discussed were not delineated with any greater specificity than in this case. It is not enough, apparently, for a licensee in effect to invite response on *all* the issues previously discussed by the President—as CBS did here. But just how “specific” and limiting the specification must be is impossible to determine from the Commission's opinions in this case and in *Hays*.

Even if it were an easy matter for licensees to specify issues to the Commission's satisfaction, in many cases it will be difficult to determine whether a given discussion is within the scope of the issues specified. For example, if a Democratic spokesman directed to respond to the President on the Indochina War presents the view that the War has diverted funds and attention from domestic needs and problems on which he then elaborates, has he spoken on issues different from the one specified and, if so, is the broadcast then a “party-oriented” one triggering reply-to-reply rights for the Republicans? What if, after a licensee has directed a particular spokesman to respond to the President on a number of specified issues, the spokesman selected dwells at length on an issue his party considers important but the President has treated only briefly, while ignoring or merely mentioning in passing an issue the President has covered at length? Must the licensee also specify the time to be spent by the spokesman on each issue?

At a minimum, we suggest that the problems created by the Commission's ruling in the sensitive area of political speech, and the discriminatory result that the ruling dictates, raise serious constitutional questions. Under these circumstances, the Commission's ruling can be upheld only if the statutory authority for the ruling is

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<sup>83</sup> See pp. 23-26, *supra*.



clear. See, e.g., *International Ass'n of Machinists v. Street*, 367 U.S. 740, 749 (1961); *Greene v. McElroy*, 360 U.S. 474, 507-08 (1959); *United States v. CIO*, 335 U.S. 106, 121-22 (1948).

Here the Commission has failed to show how its reply-to-reply requirement can be justified under any provision of the Communications Act. We have shown above not only that the ruling cannot be justified under the fairness doctrine, but that it is contra-fairness in requiring that an additional opportunity be given to present the Administration's views.<sup>84</sup> We have also shown that there is no rational basis for the ruling in terms of "fairness" or "equal opportunities" for political parties. And the Commission has advanced no other reasons to show that the "public interest, convenience or necessity"—the statutory standard governing its broadcast licensing authority<sup>85</sup>—requires or justifies this extraordinary ruling. The Commission's orders in this case should therefore be set aside as beyond the Commission's authority under the Communications Act.

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<sup>84</sup> In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), the Commission's personal attack and political editorial rules were upheld by the Court as implementations of the fairness doctrine, which was found to be embodied in the statute, its legislative history and longstanding Commission interpretation "ratified" by Congress. *Id.* at 385. *Red Lion*, however, offers no support for the Commission's ruling in this case, which, far from implementing the fairness doctrine, defeats its very purposes.

<sup>85</sup> E.g., Sections 307(d), 309(a) of the Communications Act, 47 U.S.C. §§ 307(d), 309(a).

CONCLUSION

For the above reasons, the orders of the Commission under review should be set aside.

Respectfully submitted,

J. ROGER WOLLENBERG  
EZEKIEL G. STODDARD  
DANIEL MARCUS  
FRANK W. LLOYD, III

WILMER, CUTLER & PICKERING  
900 - 17th Street, N.W.  
Washington, D.C. 20006

*Counsel for Columbia  
Broadcasting System, Inc.*

*Of Counsel:*

ROBERT V. EVANS  
RALPH E. GOLDBERG  
JOSEPH DEFRANCO  
51 West 52 Street  
New York, New York 10019

December 16, 1970

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,655

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COLUMBIA BROADCASTING SYSTEM, INC.,  
v. *Petitioner,*

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,  
*Respondents,*

DEMOCRATIC NATIONAL COMMITTEE,  
REPUBLICAN NATIONAL COMMITTEE,  
*Intervenors.*

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DEMOCRATIC NATIONAL COMMITTEE,  
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On Petitions for Review of Orders of the  
Federal Communications Commission

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**BRIEF FOR PETITIONER  
DEMOCRATIC NATIONAL COMMITTEE**

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United States Court of Appeals  
for the District of Columbia Circuit

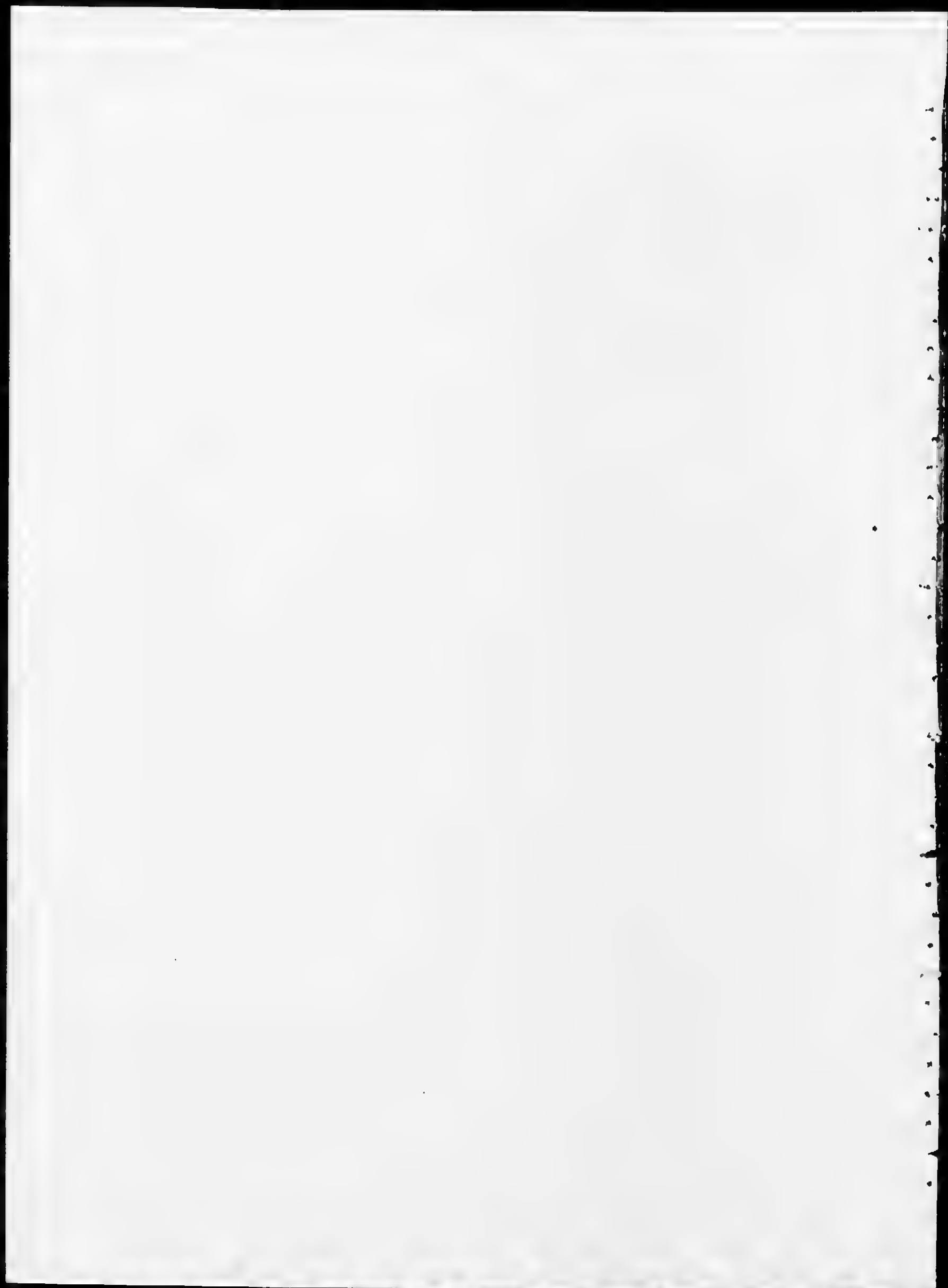
FILED DEC 21 1970

*Nathan J. Paulson*  
CLERK

JOSEPH A. CALIFANO, JR.  
DAVID H. LLOYD  
IRVIN NATHAN

1229 Nineteenth Street, N.W.  
Washington, D.C. 20036

*Attorneys for Petitioner,*  
Democratic National Committee



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IN THE  
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On Petitions for Review of Orders of the  
Federal Communications Commission

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BRIEF FOR PETITIONER  
DEMOCRATIC NATIONAL COMMITTEE

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ISSUE PRESENTED FOR REVIEW

In the opinion of the petitioner, the following issue is here presented for  
review:

Whether the Commission abused its discretion and acted arbitrarily and capriciously and without record support when it held that a twenty-five minute program broadcast by the Democratic National Committee during a non-campaign period in response to a series of more than seven hours of prime time television presentations by the President of the United States and other pro-Administration presentations required that additional air time be furnished to partisan Republican spokesmen.

[This case has not previously been before this Court.]

#### REFERENCES TO RULINGS

The rulings of the Federal Communications Commission brought here for review are a Memorandum Opinion and Order released August 18, 1970 (A. 74-126), and a Memorandum Opinion and Order released September 24, 1970 (A. 303-13), denying petitions for reconsideration of the August 18 Order. The portions of the August 18 Order which are here challenged are reported at 25 F.C.C.2d 283, 299-301 (1970) (A. 96-98) and the September 24 Order is reported at 25 F.C.C.2d 739 (1970).

#### STATEMENT OF THE CASE

##### A. The Nature of the Case.

The Court is asked in this case to review orders entered by the Federal Communications Commission concerning a fairness doctrine complaint against Columbia Broadcasting System, Inc. ("CBS"), petitioner in Case No. 24,655. The Commission, by order of August 18, 1970, ruled that CBS must provide free time to the intervenor, the Republican National Committee ("RNC") to respond to a July 7, 1970, broadcast by petitioner in Case No. 24,659, the

Democratic National Committee ("DNC") (A. 96-98). By a subsequent order, also under review here, the Commission denied petitions for reconsideration of the August 18 order filed by CBS and DNC (A. 303-14).

Review is sought pursuant to Section 402(a) of the Communications Act, 47 U.S.C. §402(a), and Section 4 of the Hobbs Act, *as amended and codified*, 28 U.S.C. §2344.

**B. Course of Proceedings and Disposition Below.**

This case arises from the unprecedented extent to which prime time (7:00 p.m. to 11:00 p.m., E.D.T.) television appearances were employed by President Nixon during his first eighteen months of office to present his views and those of his party to the American electorate. During that period, the President appeared on prime time television as often as his three immediate predecessors combined<sup>1</sup> (A. 39, 50).

Explicitly recognizing the wide disparity between Presidential appearances and the opportunities available to the principal opposition party, Dr. Frank Stanton, President of CBS, by telegram dated June 22, 1970, offered DNC twenty-five minutes of free time on the CBS television and radio networks for the presentation of the Committee's views.<sup>2</sup> This offer, it was said, was in keeping with the long-standing CBS policy to achieve fairness and balance in the treatment of public issues. (A. 20-21.)

DNC accepted the offer and on July 7, 1970, at 10:30 p.m., E.D.T., CBS carried a broadcast under the title of "The Loyal Opposition" during which Lawrence O'Brien, Chairman of the DNC, presented DNC's views on seven

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<sup>1</sup> This does not include appearances on regularly scheduled news broadcasts; reports on foreign trips; charity appeals; convention and campaign appearances in the case of President Johnson; and, in the case of President Nixon, appearances on Apollo broadcasts (A. 50).

<sup>2</sup> The program was to be one of a series of "Loyal Opposition" broadcasts on the CBS Network (A. 21). In part because of the Commission's ruling here under review, the series has been suspended and no further broadcasts have been held or scheduled (A. 129, 288).

issues of public importance which had been repeatedly discussed in prime time television by the President and other Administration spokesmen during the preceding eighteen months (A. 23-31). The half-hour time segment concluded with a five-minute commentary by CBS Correspondents Eric Sevareid and Roger Mudd<sup>3</sup> (A. 129).

RNC, on July 13, 1970, filed with the Commission a petition for relief against CBS in which it asserted that it was entitled to free time on CBS to respond to the DNC broadcast under the fairness doctrine<sup>4</sup> (A. 1-31). RNC contended that the broadcast had been "party oriented" and not "issue oriented," and had introduced a new issue — which political party should hold power (A. 4). RNC also argued that DNC was an inappropriate spokesman to discuss political, economic and social issues (A. 5). CBS submitted a letter in opposition on July 23, 1970, in which it demonstrated that the July 7 broadcast was devoted to a discussion of controversial issues and all of the subjects discussed had been explored in depth in Presidential addresses to the nation and in news conferences broadcast over radio and television (A. 32-60). A reply was filed by RNC on July 30, 1970 (A. 61-73).

On August 18, 1970, the Commission released its Memorandum Opinion and Order by which it disposed of five fairness doctrine complaints, including that of the RNC (A. 74-126). All of the complaints arose from the substantial extent to which the President has employed the broadcast media — and particularly prime time television — to present his views on controversial issues to the American public.<sup>5</sup>

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<sup>3</sup> Some CBS *network affiliates* also accepted brief fund solicitation announcements purchased at regular commercial rates by DNC which were carried at the conclusion of the broadcast (A. 36).

<sup>4</sup> On July 8, 1970, the Chairman of RNC had requested CBS to provide RNC time comparable to that provided DNC (A. 17-19). In its petition RNC said that no response to its letter had been received but indications were that the response would be negative (A. 2), as it proved to be (A. 46).

<sup>5</sup> The other four complaints were concerned, in particular, with the extent to which fairness had been achieved by the three major commercial television networks in their coverage of the Indochina War (A. 75-81).

In granting RNC the relief requested, the Commission found that CBS had acted in good faith, commended CBS for its concern and rejected RNC's argument that DNC was an inappropriate party to respond to issues raised by Presidential appearances. The Commission found, however, that the broadcast did not fulfill CBS' "intention" of allowing the principal opposition party an opportunity to reply from time to time to the President on major issues discussed in Presidential appearances. The Commission in effect ruled that, since the recent Presidential addresses had concentrated largely on the Indochina War issue, the DNC broadcast should similarly have concentrated on this issue and not devoted as much time to the other six issues which the President had previously discussed.<sup>6</sup> (A. 96-97.)

Although the holding was concurred in by five of the seven Commissioners, three of those five filed separate statements.<sup>7</sup>

DNC filed a petition for reconsideration of the Commission's ruling on August 20, 1970<sup>8</sup> (A. 218-70). In its petition, DNC demonstrated that the July 7 broadcast was not intended by any of the parties involved as a response to the President on the war issue alone as the Commission had erroneously assumed (A. 132) and that DNC had, in fact, responded to Presidential appearances

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<sup>6</sup> In its disposition of the other fairness doctrine complaints, the Commission found generally that the networks' coverage on the war issue was weighted in favor of the pro-Administration view, even apart from five prime time Presidential appearances on the subject (A. 92). These appearances, the Commission said, weighed the balance too heavily in favor of the pro-Administration view and it required by its order that each of the networks provide one more opportunity for the presentation of views differing from those of the Administration on the issue (A. 93).

<sup>7</sup> The separate concurring statements were issued by Chairman Burch (A. 105-06), Commissioner Robert E. Lee (A. 107) and Commissioner Johnson (A. 115-16), who characterized his concurrence as an "extremely reluctant" one (A. 115). Commissioner Johnson also noted that nothing in the "majority" opinion suggested that RNC was entitled to anything more than five minutes to respond to the broadcast (A. 116). Commissioners Bartley and H. Rex Lee dissented and the latter issued a brief statement (A. 108).

<sup>8</sup> Simultaneously therewith, DNC filed a motion for stay, which was subsequently withdrawn when CBS made it clear that it would not afford time to RNC until, if at all, it had exhausted its rights to review.

concerned with several controversial issues of public importance (A. 137-38). Attached to the petition were excerpts from the July 7 broadcast and excerpts from numerous televised appearances of the President on every one of the issues involved (A. 144-90). RNC filed an opposition to the petition on August 25, 1970 (A. 192-202), to which DNC responded on September 9, 1970<sup>9</sup> (A. 280-290).

CBS also sought reconsideration of the ruling on the RNC complaint on September 3, 1970 (A. 218-70). CBS demonstrated that the issues discussed on the July 7 broadcast were ones previously addressed by the President and that no showing had been made that the July 7 broadcast had resulted in an imbalance in coverage on any issue (A. 220-22). CBS pointed to a February, 1968, ruling in which the Commission held that Democratic Party spokesmen were not entitled to respond to a highly partisan broadcast by Republican Congressional leaders following President Johnson's State of the Union Message (A. 234-39). CBS also included as an exhibit details regarding Presidential and other Administration appearances on the issues discussed in the July 7 broadcast (A. 243-65). RNC filed an opposition to the petition on September 8, 1970 (A. 271-79), and CBS' reply was filed September 14, 1970 (A. 291-302).

The Commission's Memorandum Opinion and Order denying the petitions for reconsideration by a four-to-two vote was released September 24, 1970 (A. 303-14). In its order, the Commission admitted that it had not taken into account the overall balance achieved by CBS in its coverage of the various issues discussed by DNC, and that it had ignored what was actually said on the July 7 broadcast (A. 308). The Commission stated that its disposition of the matter was based on its view that the broadcast had been "party oriented" rather than "issue oriented" because CBS did not specify the issues to be discussed but

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<sup>9</sup> RNC filed a petition for further relief on August 28, 1970, in which it asked the Commission to direct CBS to provide it with reply time on or before October 10, 1970, and that CBS give RNC notice at least sixteen days in advance of the date on which the broadcast was to occur (A. 203-17). CBS filed an opposition and RNC a reply. In its September 24 order, the Commission denied the RNC petition in this respect (A. 313).



had left that determination to DNC (A. 311). Consequently, under what it deemed to be an analogous holding in the political campaign area — the *Zapple* ruling — the Commission ruled again that RNC was entitled to rebuttal time<sup>10</sup> (A. 308-09). The Commission made clear, however, that Presidential appearances — although subject to the fairness doctrine — could never be subject to the *Zapple* ruling (A. 310).

CBS filed its petition for review on September 25, 1970 (Case No. 24,655). DNC's petition was filed September 28, 1970 (Case No. 24,659). RNC was granted leave to intervene in both cases by this Court and DNC was granted leave to intervene in CBS' appeal. On the motion of DNC, this Court, on October 16, 1970, consolidated the two cases.

### C. Statement of Facts.

Television has become, in recent years, a principal vehicle by which the President presents to the public his views on important issues of the day. After the hesitant start in the Truman and Eisenhower Administrations, the White House has used the medium more and more as an integral part of the Chief Executive's power — not only in his Constitutional roles of Chief Executive and Commander in Chief, but in his extra-Constitutional role as head of his party. Since the advent of the medium each President has used television more extensively than his predecessor. Indeed, President Nixon, in his first eighteen months of office, appeared on prime time television as many times as Presidents Eisenhower, Kennedy and Johnson combined in their first eighteen months in office (A. 49-50).

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<sup>10</sup> Nicholas Zapple, 23 F.C.C.2d 707 (1970). Campaign broadcasts, which do not involve the appearance by a candidate, are not subject to the equal opportunities provision of Section 315 of the Communications Act, 47 U.S.C. § 315. In *Zapple*, however, the Commission ruled that in connection with political campaigns a broadcaster could not sell or give time to the supporters of one candidate and refuse to sell or give equivalent time to supporters of opposing candidates.

In his first eighteen months in office, President Nixon made a total of 37 live nationwide television appearances — fourteen of them in prime time. He spent more than seven hours of prime time on all of the major television networks simultaneously advocating his viewpoints on numerous controversial issues of the day at any length desired and in a format which he totally controlled. The President used his instant access to the broadcast media to seek support from the American public for his position on many controversial matters of public importance. Thus, he used television to air (a) his veto of a \$20 billion appropriations bill for the Departments of Labor and Health, Education & Welfare, (b) his proposed changes in the nation's welfare legislation, (c) his decision to replace striking Post Office workers with National Guardsmen, and (d) his views on the economy, as well as (e) his views on the war in Indochina. (A. 133-34.)

In many of the nationwide television addresses and news conferences, the President has spoken as the head of state. As leader of all of the American people, the President is, to a degree, above party and politics, and this is often manifested in the general tenor of his remarks. The President, as all elected officials, is nevertheless identified with a political party and frequently when he speaks out publicly on issues he is explicitly speaking for the party he leads and for the proposition that *his* party is best able to govern.

President Nixon's televised remarks directly reflect his role of party leader. He has used the occasion of live television to announce his practice of endorsing all Republican nominees for public office (A. 135). He has frequently extolled the virtues of the Republican Administration and has severely criticized the positions or actions of the previous Democratic Administration and the current Democratically-controlled Congress (A. 134, 227-31).

For example, in his last State of the Union Address, President Nixon said that he was breaking with the "tradition" of using that address "to lay the basis for the political issues which might be decisive in the fall" (A. 227). Nevertheless, he made a number of remarks comparing his performance and

plans with those of his Democratic predecessors. He placed "the primary blame" for rising prices on the Federal Government's deficit spending "in the decade of the sixties" (during which Democrats controlled the White House), contrasting this with his own budget practices and plans (A. 227). And he contrasted his plans to win the war against crime with his predecessor's "overblown rhetoric" on "wars":

"We have heard a great deal of overblown rhetoric during the sixties in which the word 'war' has perhaps too often been used — the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word 'war' is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives." (A. 227-28.)

In the same connection, he noted that the Democratically-controlled Congress had failed to pass any of his thirteen recommended bills to deal with the crime problem (A. 228).

The President's televised press conferences have contained remarks of a similar nature, combined with attacks on officials and policies of President Johnson's Administration. Thus, by way of example, in his press conference of June 19, 1969, President Nixon stated, in response to a question about former Defense Secretary Clifford's Vietnam troop withdrawal proposal, that —

"in the year . . . in which he was Secretary of Defense, our casualties were the highest of the whole 5-year period and, as far as negotiations were concerned, all that had been accomplished . . . was that we had agreed on the shape of the table." (A. 228-29.)

In his September 26, 1969 press conference, the President characterized his Democratic predecessor's use of "jawboning" to avert inflationary price increases as follows:

"[T]he previous administration tried, through jawboning, as it is called, to put the blame on business for price increases; the blame on labor for wage increases. . . . It [jawboning] is hypocritical, it is dishonest, but most important, it is ineffective, because, since 1966 . . . despite all the calling of the people to the White House, telling them to hold prices down, hold wages down, prices continued to escalate." (A. 229.)

And, during "A Conversation with the President on Foreign Policy," broadcast by the television networks on July 1, 1970, the President was asked to comment on a statement by George Ball, Under Secretary of State during the Johnson Administration, that "the Russians were bold enough to move into the Middle East because we were bogged down in Indochina." The President replied:

"As a matter of fact, Mr. Smith, Mr. Ball should know something about that because he was there when we got bogged down in Indochina as you recall, as Under Secretary of State. I did not hear his comments at that time indicating that that was the problem."<sup>11</sup> (A. 230.)

Pronouncements such as those referred to have been aired simultaneously over the three major commercial television networks, many of them in prime time. In addition to the huge direct audiences for these broadcasts, since there is inherent newsworthiness in anything that the President says, what he says is later reported extensively on televised newscasts and elsewhere.

It was against this backdrop that CBS formulated the "Loyal Opposition" concept as one means of minimizing the imbalance in exposure of political

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<sup>11</sup> The Vice President has expressed even stronger views on the previous Administration's Vietnam policy. In a November 13, 1969 speech broadcast by CBS, Vice President Agnew had the following to say about President Johnson's representative at the Vietnam peace talks:

"A word about Mr. Harriman. For ten months he was America's chief negotiator at the Paris Peace Talks — a period in which the United States swapped some of the greatest military concessions in the history of warfare for an enemy agreement on the shape of a bargaining table. Like Coleridge's Ancient Mariner, Mr. Harriman seems to be under some heavy compulsion to justify his failures to anyone who will listen." (A. 230.)

views and to treat opposing views on public issues fairly.<sup>12</sup> Under the "Loyal Opposition" concept, CBS stated that it would from time to time provide the principal opposition with free prime network time to present its views to the American public. The "fundamental reason" behind the decision has been stated by CBS' President to be as follows:

"[W]e live in a two party system. Both of the parties represent broad cross sections of the American people. They represent all regions of the country. Each has within its ranks conservatives and liberals. Each has members holding major state and local offices as well as Federal offices. Each speaks for millions of our citizens, not merely on a single or a dominant issue, but on all issues — foreign and domestic, economic and social, civil and military. Both parties, too, have a strength generally unknown in the political parties of other nations: both parties accommodate very wide ranges of views, the differences within them often being as great as the differences that divide them. Although this characteristic has been of saving uniqueness to the American political experience, because it has rendered splinter parties unnecessary, it has also posed the problem of who speaks for the parties — a problem which we at CBS had to face in offering time to the opposition party.

"In the case of the party in executive power, this is not a problem. Obviously the Presidency of itself is of pre-emptory power in partisan politics, and the President speaks for his party . . . . In the case of the party out of executive power, however, there is no one government official who, because of the office he holds, speaks with the same authority for the party out of power as a whole that the President does for his party. Congressmen and Senators represent their constituents, and not their party, in their duties — and those constituencies, unlike the constituency of the Presidency, are formed of state and local bodies rather than one national in scope. . . .

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<sup>12</sup> According to CBS, its other efforts in seeking to achieve fairness in the presentation of opposing views on public issues center on its news and public affairs programming (A. 51).

"In view of these facts, the one place in which logically to put responsibility for speaking for the opposition party — or for deciding who should speak for it — is that party's National Committee. . . ." (A. 51-53).

The invitation to DNC for the first "Loyal Opposition" program was extended by a June 22, 1970 telegram from Dr. Stanton to Mr. O'Brien. When DNC accepted the offer, there were no preconditions imposed upon DNC as to what issues were to be discussed. DNC elected to address its remarks to seven issues, everyone of which had been discussed at far greater length during previous Presidential broadcasts than the duration of this program permitted.

In the July 7, 1970 "Loyal Opposition" broadcast, Mr. O'Brien, on behalf of DNC, responded for twenty-four minutes (the other minute was taken by the "lead-in" and "close-out") to the President's televised viewpoints on these specific issues of public importance: (1) the state of our economy; (2) the nation's crime problem; (3) civil rights for Blacks and other minorities; (4) federal expenditures for defense versus public domestic uses; (5) air and water pollution; (6) student dissent and national unity; and (7) the war in Indochina. The program included televised portions of numerous Presidential addresses followed by Mr. O'Brien's comments concerning the subject which the President had discussed. (A. 23-31.)

In addition to affording time on July 7, 1970, Dr. Stanton, in his June 22, 1970 telegram, stated that from time to time during the course of the year CBS would make available free time to the principal opposition party under the overall title "The Loyal Opposition" (A. 21). In part because of the ruling here under review — that RNC was entitled to free time to respond to the July 7 broadcast — the "Loyal Opposition" series has been suspended.



## ARGUMENT

THE COMMISSION'S HOLDING IS ARBITRARY AND CAPRICIOUS AND AN ABUSE OF DISCRETION BECAUSE IT LACKS ANY RATIONAL BASIS AND CONTRAVENES THE AIMS SOUGHT TO BE SERVED BY THE FAIRNESS DOCTRINE

The Commission has ruled — in the name of fairness — that a more than fourteen-to-one ratio of prime time television exposure in favor of the views of the current Republican Administration is inadequate. According to the holding under review, a twenty-five minute broadcast by the DNC responding to views expressed by the President in more than seven hours of prime time television appearances must now be countered by a rebuttal on the part of RNC or other partisan Republican spokesmen whose views do not differ one whit from those of the Administration.

The Commission acknowledges that its holding is not based on traditional fairness doctrine grounds (A. 308). Rather, the Commission created for the occasion what it termed the “political spokesman” corollary of the fairness doctrine even though the DNC broadcast did not occur in the context of a political campaign (A. 308). The corollary was applied, according to the Commission, not because of what was said on the broadcast — or because of the issues discussed on the broadcast — but rather because CBS did not dictate to DNC the issues which were actually discussed. The Commission stated:

“[The program] was ‘party-oriented’ rather than ‘issue-oriented’ *because* of CBS’ abstention in this critical area of issues to be covered.” (A. 311; emphasis added.)

The Commission’s holding is fundamentally at odds with the essential purpose of the fairness doctrine — to assure to the public a fair and balanced presentation of all responsible views on issues of public importance. The “Loyal Opposition” program was presented by CBS as one means of balancing, to some extent at least, the enormous impact on public opinion of Presidential appearances.



That purpose is defeated — and the overwhelming imbalance restored — by the Commission's determination that RNC must be given time to respond to the DNC broadcast.

The tortured route which the Commission took in relegating the DNC broadcast to the newly-devised "political spokesman" corollary of the fairness doctrine is lacking in any rational basis. In reaching its result, moreover, the Commission not only failed to distinguish, but acutally cited with approval, a precedent directly contrary to the position which the Commission now takes.

In view of all these infirmities, the Commission's rulings must be set aside and held to be unlawful as arbitrary, capricious and an abuse of agency discretion under section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 706.

**A. The Holding Has No Foundation In the Fairness Doctrine and Undermines the Intended Purpose of the Doctrine.**

In its holding here, the Commission rejected traditional fairness doctrine principles, substituted its judgment for the journalistic judgment of CBS and reached a conclusion which, in practical effect, is patently unfair and which portends the creation of a single voice in the nation's political affairs.

The basic administrative action with respect to the fairness doctrine was taken by the Commission in its 1949 report, *Editorializing by Broadcast Licensees*, 13 F.C.C. 1246 (1949). That report continues to constitute the Commission's policy in this area. *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 2 P & F Radio Reg.2d 1901, 1903 (1964).

In the 1949 report, the Commission determined that the public interest is best served when the public is able to hear the views of responsible groups and individuals on the controversial issues of the day. Consequently, broadcast licensees "have an affirmative duty generally to encourage and implement

the broadcast of all sides of controversial public issues over their facilities, over and beyond their obligation to make available on demand opportunities for the expression of opposing views." *Editorializing by Broadcast Licensees, supra*, 13 F.C.C. at 1251. Recognizing the difficult task involved in discharging their obligations in this regard, the Commission extended to the broadcasters a great deal of discretion in their performance under the fairness doctrine:

"The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view. . . . Undoubtedly, over a period of time some licensees may make honest errors of judgment. But there can be no doubt that any licensee honestly desiring to live up to its obligation to serve the public interest and making a reasonable effort to do so, will be able to achieve a fair and satisfactory resolution of these problems in the light of the specific facts." 13 F.C.C. at 1251-52.

The fairness doctrine does not generally require an equality of opportunity as is the case of appearances by candidates for public office under section 315 of the Communications Act, 47 U.S.C. § 315. In fact, in the August 18 ruling here involved, the Commission specifically declined to apply an "equal time" standard in the fairness field (A. 86). Nevertheless, the doctrine does require a fair and balanced presentation of responsible opposing views on a particular issue. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 377 (1969).

Because of the vagaries inherent in the doctrine, the Commission, in its disposition of complaints charging violations, has given great weight to the good faith efforts of the broadcaster to comply with his responsibilities. Where a complaint is filed alleging a violation of the fairness doctrine, the Commission has traditionally evaluated the overall performance of the licensee to determine whether the licensee's efforts, undertaken in good faith, have resulted in a fair balance on the issue in question. See, e.g., *Stanley Sapiro*, 26 F.C.C.2d

(1970); *California Comm. Opposed to Oil Monopoly*, 40 F.C.C. 45 (1956).

The Commission admittedly abandoned that approach here (A. 308).

The July 7 broadcast dealt with seven major public issues: (1) the state of the economy; (2) the nation's crime problem; (3) civil rights for Blacks and other minorities; (4) federal expenditures for defense versus public domestic uses; (5) air and water pollution; (6) student dissent and national unity; and (7) the war in Indochina (A. 23-31). In its August 18 ruling, the Commission did not analyze CBS' performance to determine whether the July 7 broadcast had given rise to such an imbalance in the presentation of views on these issues that additional time was required to be afforded a partisan Republican spokesman. The August 18 ruling proceeded on the assumption that CBS had given time to DNC to respond to the Presidential addresses on the Indochina war issue. (A. 96-97.) Even on the assumption that the July 7 broadcast was intended by CBS as a response to Presidential addresses on the war in Indochina — which it was not — the Commission advanced no justification for the holding that, under the fairness doctrine or any corollary thereof, time must be afforded RNC in order to provide balance on the issues discussed on the DNC program.

In its order on reconsideration, the Commission abandoned its earlier determination that the July 7 broadcast was intended as a response on the war issue (A. 311). The Commission also admitted that it had not taken into account CBS' overall presentations on the issues covered in the July 7 broadcast (A. 308). Implicitly at least, the Commission also recognized that CBS' coverage of the issues had accorded with its general obligations under the fairness doctrine (A. 309 n. 13). Moreover, the Commission did not find as a necessary predicate to a ruling that reply time was in order, that the July 7 broadcast had created an unfair imbalance in the presentation of differing views on any particular issue.

In point of fact, the *assumption* — and it was only that — implicit in the Commission's ruling that prior to the July 7 broadcast there was no imbalance

on the coverage of the issues discussed by Mr. O'Brien is highly questionable (A. 309 n. 13). In the August 18 order, by which four fairness doctrine complaints pertaining to the war issue were also considered, the Commission was called upon to evaluate a comprehensive analysis of CBS' coverage on that issue. The Commission found that CBS' coverage of the war issue was weighted in favor of the Administration point of view, without even giving consideration to the five prime time appearances by the President. According to the Commission, the Presidential addresses on the subject — coming from the leading proponent of a particular view — greatly increased the imbalance in coverage and required remedial action. (A. 92-94.)

All of the issues discussed on the July 7 broadcast had likewise been the subjects of televised Presidential appearances (A. 144-91, 243-47). The presumption of an imbalance, similar in magnitude to that involving the war issue, with respect to the other issues discussed by Mr. O'Brien on the July 7 broadcast, would therefore be more reasonable than the presumption of balance, which the Commission actually made. Assuming CBS' news presentations, news documentaries and programs such as "Face the Nation" are internally balanced in accordance with CBS' expressed intention (A. 51), we submit that prime time Presidential presentations of the Administration point of view on issues will inevitably weight the balance on any issue in favor of the Administration's point of view. The question then becomes whether the disparity is so great as to be unfair and to permit the networks to seek some balance.

In a manifest effort to avoid the consequences of the fairness doctrine, RNC, in its complaint, contended that the July 7 broadcast raised a "new issue": "which party should hold power" (A. 3). The short answer is, of course, that in neither of its orders here under review did the Commission adopt this contention. *SEC v. Chenery Corp.*, 318 U.S. 80 (1943). Nevertheless, even if the Commission had adopted the RNC position that this was the focus of the July 7 broadcast, there is no basis for finding that this was an issue raised for the first time in the DNC broadcast.

The Commission did not analyze any Presidential speech or other presentation. If it had, it would have perceived that a recurrent theme in virtually every Presidential presentation on nationwide television has been to contrast the performance of the present Administration with the previous Administration and the actions of the present Administration with the Democratically-controlled Congress. See *supra*, pages 8-10. The thrust of these remarks — implicitly if not explicitly — is that the Republican Party is better able to govern the nation than is the Democratic Party. Those presentations have raised just as directly, or just as indirectly, the issue of which party should govern, as did the July 7 program.

It is clear from the record here that CBS in its overall performance over a period of time has acted in good faith. To the extent any imbalance exists, it is one heavily in favor of the Administration point of view. The July 7 broadcast stands as only one small weight on the other side.

The Commission's ruling flies in the face of all precepts of fairness. At the very least the practical impact of the holding is that the party in power is entitled to two bites of the apple for every one taken by the party out of power. The immediate impact will be an exacerbation of the imbalance which already exists. If the order stands, the long-range impact may be that the view of the Administration will become an overriding voice in place of the "uninhibited, robust, wide-open" debate which the public interest demands. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). In part because of the ruling here, CBS' "Loyal Opposition" series has been suspended.

**B. The Commission's Attempt To Justify Its Departure From Fairness Doctrine Principles on the Basis of the So-Called "Political Spokesman" Corollary Has No Rational Basis.**

The Commission sought to justify its decision not to follow "the general fairness doctrine pattern" (A. 308) by applying what it termed the "political spokesman" corollary to the fairness doctrine, which was enunciated in its letter to *Nicholas Zapple*, 23 F.C.C.2d 707 (1970). In applying a doctrine applicable to political campaigns to a non-campaign broadcast, the Commission relied upon a meaningless consideration which has nothing to do with the right of the public to receive a balanced presentation on controversial issues of public importance. Consequently, the determination in this regard must fail for want of a rational basis. *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167-68 (1962).

In *Zapple*, the Commission ruled that where a broadcaster sells time to supporters of one candidate for public office, he cannot refuse to sell equivalent time to supporters of the competing candidates. The Commission also said that if time were given to supporters of one candidate, the licensee would be required to give equivalent time to the supporters of opposing candidates. Without such a ruling, which in reality is an application of the fairness doctrine in a special situation (a political campaign), a broadcaster could refuse to sell time to candidates as such, but could influence an election by selling substantial blocks of time to the supporters of one candidate and refusing to sell time to supporters of his opponents. This is so because the "equal opportunities" provision of section 315 of the Act applies only to appearances by the candidate.<sup>13</sup>

<sup>13</sup> In the *Zapple* ruling, the Commission also said that the *Cullman* aspect of the fairness doctrine would not apply to paid broadcasts on behalf of political candidates. In *Cullman Broadcasting Co.*, 25 P & F Radio Reg. 895 (1963), the Commission held that a licensee could not avoid his responsibilities under the fairness doctrine because of an inability to obtain paid sponsorship for a response to a particular view on a controversial issue of public importance even though the initial presentation was sponsored. In other words, in *Zapple* the Commission said that an imbalance in the financial resources of candidates could, in the public interest, give rise to an imbalance in their use of broadcast facilities.



In support of its determination to apply the *Zapple* ruling here, the Commission presented an "analogy." The "supposition" advanced by the Commission was that CBS would give DNC one-half hour of prime time in an election period which would be used by DNC to discuss important election issues. In that situation, the Commission said, CBS would not rely upon previous Presidential appearances and the overall balance achieved by CBS in its news and other programming, but would provide equivalent time to RNC. (A. 308.)

This so-called "analogy" is utterly meaningless to the resolution of the issue here. The fact is that the "Loyal Opposition" broadcast here involved did not occur during an election period. It was presented at 10:30 p.m., E.D.T., on one summer night, even before the identities of candidates in the primary elections were known. Nowhere in the broadcast was any reference made to any forthcoming election for political office. In short, the Commission's "analogy" is an unwarranted attempt to cast the issues presented by this case in a factual setting far different from the one which actually exists.

In fact, a more pertinent counter-analogy can be posed. Suppose that for one hour each week over an eighteen month period the President had gone on prime-time television to espouse the views of his Administration. Would it then be reasonable for CBS to contend, in response to a request for reply time on the part of opposing political spokesmen, that all issues had been fairly covered because of the internally balanced treatment given CBS to the issues in its other news and public affairs programs? Certainly not!

The "analogy" is not the only <sup>deficiency</sup> ~~deficiency~~ in the Commission's analysis, however. The Commission conceded that it was not taking into account the overall performance of CBS on the issues covered in the July 7 DNC broadcast and it ignored altogether the actual content of the broadcast (A. 308). The Commission did not find that the July 7 broadcast in any way created imbalance in the coverage of the issues of such magnitude to require that responsive time be given partisan Republican spokesmen; indeed, it did not find any imbalance. Moreover, on reconsideration, the Commission dropped its earlier



contention that the July 7 broadcast was intended by CBS as a response to numerous presentations of the President of his views on the Indochina War (A. 311). The Commission did say, however;

“But the matter does not turn on what issues CBS selected as the first to be covered. For, CBS did not specify any issues. It simply turned the time over to the DNC for whatever use it might want to make of it. However well-intentioned CBS was, the result here was simply the ‘political party’ situation which we described at the outset. It was ‘party-oriented’ rather than ‘issue-oriented,’ *because* of CBS’ abstention in this critical area of issues to be covered.” (A. 311; footnotes omitted; emphasis added.)

What the Commission seems to say is that the identical broadcast could have been presented without giving rise to rebuttal time on the part of RNC had CBS said to Mr. O’Brien that he should discuss the seven issues — and only the seven issues — to which the July 7 presentation was addressed. It was not the content of the broadcast itself, but the fact that CBS failed to specify issues, which, in the Commission’s view, made the broadcast “party oriented” rather than “issue oriented,” whatever those terms might mean. A partisan discussion of issues is, according to the terms of the Commission’s decision, “party oriented” if the party spokesman selects the issue to be discussed, but not “party oriented” if the licensee directs the party spokesman to discuss the same issues.

This Court has only recently noted that in its evaluation of an agency ruling it must be satisfied that the agency’s fact findings are supported by substantial evidence and *provide rational support for the agency’s inferences of ultimate fact*. *Greater Boston Television Corp. v. FCC*, \_\_\_ U.S. App. \_\_\_, \_\_\_ F.2d \_\_\_ (No. 17,785, Nov. 13, 1970), Slip Op. at 16. Here, the fact that CBS did not dictate to DNC the issues to be covered in the July 7 broadcast does not provide rational support for the proposition that the program is “party oriented” rather than “issue oriented,” particularly when the record is clear that it was issues which were discussed.

Furthermore, it is highly questionable whether the mandate to broadcasters inherent in this ruling to dictate, censor and restrict partisan political spokesmen in their televised presentations accords with the public interest.<sup>14</sup> The public must be equipped to make hard choices between competing political views. This end is best served when there is robust debate among the people most directly involved — the spokesmen themselves — not where the operator of a federally licensed facility must circumscribe that debate as a condition precedent to airing it at all. See, *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

There is a further dimension to the arbitrariness inherent in the instant ruling, even assuming that the "political spokesman" corollary can rationally be applied to a non-campaign presentation of the type involved here. The Commission has determined, without meaningful discussion, that Presidential appearances, although subject to the fairness doctrine, are never subject to the "political spokesman" corollary. We agree that because of the unique position which the President occupies, he is in one sense above party and politics. On the other hand, for the Commission to adopt without reasoned analysis a per se rule that the "political spokesman" doctrine — if valid at all — is never applicable to Presidential appearances is totally arbitrary and unfair.<sup>15</sup>

As discussed, *supra*, pages 8 to 10, many of the President's remarks have been devoted to a highly partisan exposition of the view that he and his

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<sup>14</sup> The Commission's mandate is to regulate in accordance with the public interest, convenience and necessity. *E.g.*, 47 U.S.C. §§ 308, 309.

<sup>15</sup> The Commission did recognize that appearances by an incumbent President as a candidate for re-election would be subject to the "equal opportunities" provision of section 315 of the Act. Even here, however, the incumbent is given a built-in advantage for the statute specifically exempts coverage of bona fide news events and news interviews from the "equal opportunities" standard. By virtue of his office alone, virtually everything the President says is deemed by the journalistic fraternity to be inherently newsworthy. Moreover, Presidential addresses on important issues have been held by the Commission to constitute exempt appearances even though implicit in all such appearances is the proposition that the President is better able to govern the nation than is his opponent. *Republican Nat'l Comm.* 40 F.C.C. 408, *aff'd per curiam by an equally divided Court by order entered October 27, 1964; sub nom.* Goldwater v. FCC, Case No. 18,963 (D.C. Cir.), *cert. denied*, 379 U.S. 893 (1964).

party are better equipped to lead the nation than is the party out of power. The incumbent President has used prime time television appearances to endorse all Republican candidates for office (A. 135), to characterize as "dishonest" practices of the previous Administration (A. 229), to chastize Congress for adopting legislation (A. 280) and for failing to adopt Administration proposed legislation (A. 228), and to attack personally the qualities and performance of opposing political leaders both within the prior Administration (A. 228-29) and within Congress (A. 229).

Under the Commission's ruling, if CBS or any other network *permits* a partisan response by a spokesman in the party out of power to a Presidential appearance, those who share the views of the President must be given rebuttal time; in other words, by government sanction the Administration's point of view is entitled — at the very least — to at least twice the exposure of views of its adversaries. As CBS argues in its brief (p. 30), the government is constitutionally required to be neutral as between competing points of view. In promulgating the ruling, the effect of which is to require double exposure of the views of one party — the party which controls the White House — the Commission has transgressed the First Amendment. See *Fowler v. Rhode Island*, 345 U.S. 67 (1953); *Niemotko v. Maryland*, 340 U.S. 268 (1951).

**C. The Ruling Here Is Directly Contrary to a Prior Commission Ruling and No Rational Grounds for Distinction Are Stated.**

In its petition for reconsideration, CBS placed before the Commission a ruling which the Commission had issued in February, 1968, which is directly in point (A. 237-38).<sup>16</sup> In that ruling the Commission sustained CBS' refusal to give Democratic Congressional leaders time to respond to a highly partisan broadcast by Republican leaders, which followed President Johnson's 1968

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<sup>16</sup> Letter from Chairman Rosel H. Hyde to Hon. Wayne L. Hays, Commission Ref. No. 8330-S; C-2105 (1968). The *Hays'* ruling is printed in its entirety at A. 237-39. The text of the broadcast involved is reprinted at A. 266-69.

State of the Union message. In its ruling here, the Commission did not overrule or distinguish that ruling; it merely cited it approvingly (A. 312).

While an administrative agency is not forever bound by its earlier interpretations, neither may it ignore them. Were an agency free to decide every case in a vacuum — with no reference to earlier determinations in similar contexts — the result would inevitably become that every agency decision would serve whatever exigencies of the moment the agency desired to serve. But that is not the case. This Court only recently reiterated the principle that agencies must take cognizance of what has gone before. Where an action represents a departure from prior policies and determinations, an articulate basis for the departure must be advanced. In *Greater Boston Television Corp. v. FCC*, \_\_\_ U.S. \_\_\_, \_\_\_ F.2d \_\_\_ (No. 17,785, Nov. 13, 1970), this Court stated the rule in the following terms:

“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.” Slip Op. at 21. (Footnotes omitted.)

We submit that the Commission scarcely blinked the *Hays* ruling and has, indeed, crossed the line to the intolerably mute.

The *Hays* ruling arose in the context of the 1968 State of the Union message of President Johnson. In that address — as in all State of the Union messages — the President discussed virtually every major issue of national concern. For example, the 1968 address included discussion of the Vietnam War, national defense, urban development, housing, consumer protection, crime and law enforcement. 4 WCPD 70-18 (1968).

As it had done in the two preceding years, CBS invited Republican Congressional leaders to respond to the State of the Union address. Insofar as can be ascertained, CBS did not specify which of the many issues discussed by the

President should be discussed on the program, require that those issues be discussed at all, or allocate time for the discussion of any particular issue.

The resulting one-hour broadcast did contain some discussions of issues, but it also contained highly partisan comments on the President's leadership (A. 266-69).

Representative Bush, for example, criticized what he referred to as the Administration's "reckless policy" of deficit spending (A. 236, 268). According to views expressed by Senator Tower on the broadcast, the Vietnam War would have then been over "if the Johnson Administration had acted with determination instead of vacillation." (A. 236, 269.) Representative Ford, the House Republican leader, questioned in highly partisan and personal terms the President's leadership capabilities. He said:

"The Ship of State is wallowing in a storm-tossed sea, drifting toward the rocks of domestic disaster, beaten by the waves of worldwide fiscal crisis that threatens shipwreck . . . .

"We need a Captain with courage to clear the deck — jettison the deadweight — a Captain who learned his seamanship beyond the Potomac and the Pedernales." (A. 235-36, 267.)

Representative Poff criticized the "law and order" record of the Administration. He stated:

"Murder is epidemic. Rape is commonplace — burglary happens so often it is no longer news. Pornography, filth and dope are peddled on nearly every street corner. Crime has grown six times as fast as the population.

"Despite the urgent warnings of FBI Director Hoover and law enforcement officers everywhere, the Johnson Administration has failed to take effective action. The Attorney General has banned the use of modern investigative techniques. The soaring increase in crime has been called just 'a little bit' of an increase." (A. 236, 268.)

Notwithstanding the tenor of the broadcast — ostensibly in response to the State of the Union message which the President is directed by the Constitution to deliver — the Commission rejected the request of Democratic Congressional leaders that they be afforded time to respond. In doing so, the Commission relied upon traditional fairness doctrine principles. The Commission said its role was not to substitute its judgment for that of the broadcaster, but rather to determine whether the broadcaster could be said to have acted in good faith in discharging his obligation to bring about a balanced presentation of opposing views. The Commission concluded that CBS had acted within the wide discretion afforded it by the fairness doctrine and, accordingly, it would not direct CBS to provide reply time to Democratic Congressional leaders. (A. 237-39.)

The Commission failed to distinguish the *Hays* case or to set forth a basis for the departure therefrom. For this reason as well, the Commission's decision must be set aside as arbitrary, capricious, and an abuse of agency discretion. *Secretary of Agriculture v. United States*, 347 U.S. 645, 653 (1954).

If the *Hays* ruling was correct, the present ruling is wrong. If the *Hays* case was wrong, it was necessary for the Commission rationally to explain why. As matters now stand, the present ruling is simply a reflection of an agency's whim for the unevenhanded dispensation of injustice.

### CONCLUSION

For the foregoing reasons, the Commission's Orders should be set aside.

JOSEPH A. CALIFANO, JR.  
DAVID H. LLOYD  
IRVIN NATHAN

1229 19th Street, N.W.  
Washington, D.C. 20036

*Attorneys for Petitioner,*  
Democratic National Committee

Dated: December 21, 1970.





JOINT FOR SUBSCRIPTION

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

No. 17,011

JOHN H. MURPHY, JR., Plaintiff,  
vs.  
JOHN H. MURPHY, JR., Defendant.

JOHN H. MURPHY, JR., Plaintiff,  
vs.  
JOHN H. MURPHY, JR., Defendant.  
JOHN H. MURPHY, JR., Plaintiff,  
vs.  
JOHN H. MURPHY, JR., Defendant.

JOHN H. MURPHY, JR., Plaintiff,  
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are marked with an asterisk.



IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,655

---

COLUMBIA BROADCASTING SYSTEM, INC.,  
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,  
Respondents,

DEMOCRATIC NATIONAL COMMITTEE,  
REPUBLICAN NATIONAL COMMITTEE,  
Intervenors.

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No. 24,659

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DEMOCRATIC NATIONAL COMMITTEE.  
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,  
Respondents,

REPUBLICAN NATIONAL COMMITTEE,  
Intervenor.

---

ON PETITION FOR REVIEW OF ORDERS OF THE  
FEDERAL COMMUNICATIONS COMMISSION

---

BRIEF FOR RESPONDENTS

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COUNTERSTATEMENT OF ISSUE PRESENTED\*

Whether the Commission abused its discretion when it held that a 25-minute program broadcast by the Democratic National Committee, which ranged over a broad spectrum of issues not recently covered by the President on television, gave rise to an obligation on the part of the Columbia Broadcasting System to provide comparable time to partisan Republican spokesmen.

COUNTERSTATEMENT

These two consolidated cases involve petitions for review brought under Section 402(a) of the Communications Act of 1934, as amended, 47 U.S.C. 402(a), from that part of a Commission Memorandum Opinion and Order released August 18, 1970, which requires that petitioner Columbia Broadcasting System (CBS) provide time to a Republican Party spokesman pursuant to the fairness doctrine (A. 96-98), and a Memorandum Opinion and Order released September 24, 1970, which denied reconsideration of the prior order (A. 303-313). CBS and the Democratic National Committee (DNC) have both petitioned for review of the above orders.

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\* This case has not previously been before this Court.

Since his accession to office in January, 1969, President Nixon has utilized television on a number of occasions to air his views on current problems and issues. In the eight months between November 3, 1969, and June 3, 1970, the President gave six television speeches, all but one of which dealt with the war in Southeast Asia.<sup>1/</sup> In response to all of these Presidential appearances and as part of its general obligation under the Commission's fairness doctrine, CBS initiated a program series entitled "Loyal Opposition" which was designed to "provide the principal opposition party free prime network time to present its views in any way it sees fit." (A. 51) In line with this concept CBS offered 25 minutes of time to DNC for use on July 7, 1970 (A. 20-21). This offer was accepted and on the appointed date Mr. Lawrence F. O'Brien, Chairman of the DNC, delivered a 25-minute address. Only two minutes were devoted to the war issue, with the remaining 23 minutes being used to discuss issues which the President had not recently

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<sup>1/</sup> Not counted are the State of the Union message, Presidential press conferences and other news appearances. The above speeches are voluntary, live, President-initiated appearances.

referred to in his televised addresses (A. 23-31).

The Republican National Committee (RNC) then asked CBS for comparable time to answer Mr. O'Brien (A. 17-19). Shortly thereafter, having received no reply, RNC filed a complaint with the Commission alleging that Mr. O'Brien's broadcast constituted an attack on the President and the Republican Party and that this opened up a new issue, namely, which party should hold power (A.1-31). RNC claimed that CBS had to present the opposing viewpoint and that it, RNC, was the most appropriate spokesman.

The Commission found merit in RNC's complaint (A. 96-98).<sup>2/</sup> It held that the circumstances surrounding the July 7, 1970, broadcast brought this case within the quasi-"equal opportunities" type of situation which had been articulated in the Letter to Nicholas Zapple, 23 F.C.C. 2d 709 (1970). That case involved "application of the fairness doctrine to situations involving spokesmen for political parties." There the Commission held, in a corollary to the fairness doctrine, that a station is required to provide one political party with the same broadcast opportunity that it voluntarily provided to another political

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<sup>2/</sup> This opinion also disposed of a number of other complaints stemming from the television networks' coverage of the war.

party. The Commission applied this so-called "political party" rule to the facts of the instant case. Thus, it stated that there was nothing inherently wrong with CBS' "Loyal Opposition" concept of having spokesmen for the opposing party answer the President, but that the July 7, 1970, broadcast "did not fulfill CBS' intention." This was because all of the President's television speeches in the preceding 8 months, save one (on the economy), concerned the war in Southeast Asia. The DNC broadcast spent only two minutes on this issue and the rest on other issues. Thus the Commission felt that while CBS' concept was an appropriate one, its stated objective of allowing for a response by an appropriate opposition spokesman to the President's speeches was not met in this case and that the situation instead fell within the holding of Zapple, supra. Under the circumstances the Commission ruled "that fairness requires CBS to extend some time to RNC or a partisan Republican spokesman, to answer matters raised in the DNC broadcast" (A. 97).

Both CBS and DNC requested reconsideration of this ruling. The Commission denied their petitions in a Memorandum Opinion and Order released September 24, 1970 (A. 303-313), which contained a lengthy exposition of the Commission's

rationale. It was first made clear that the Commission did not regard the case as one which could properly be resolved by simply applying general concepts of fairness, i.e., whether the network had given reasonable exposure to conflicting views. Instead it saw the situation was being governed by a "specific corollary" of the fairness doctrine, "like personal attack or political editorializing," namely the "political party" doctrine contained in Nicholas Zapple (A. 308). The Commission reviewed the basis of that ruling as follows: During an election period if a station provides time to one major political party, it may not refuse time to the other party on the ground that the issues discussed in the first broadcast had already been fairly covered by the station in other ways. Normally in a campaign, the Commission reasoned, the only logical and appropriate spokesman for the opposing view would be one designated by the other political party.<sup>3/</sup> The Commission recognized that July 7, 1970, the date of the

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<sup>3/</sup> This quasi-"equal opportunities" ruling is of course analogous to the Section 315 equal opportunity provision for political candidates.

O'Brien broadcast, was not quite as sensitive a date as October, but observed that "'electioneering' is a continuing process" (A. 309), and true fairness in the circumstances could not be achieved by simply adhering to the broad outlines of the fairness doctrine.

The Commission further stated that non-campaign Presidential appearances do not come within this "political party" rule since the President occupies a unique position as leader of all the people (A. 310). The President's appearances can and do promote his party's position, but the Commission pointed out that "it is the general fairness doctrine, and not the 'political party' doctrine, which is applicable to these Presidential appearances" (A. 310). Thus CBS has wide latitude in fashioning counterbalancing programming to the President's appearances. It could use any mix of program material in order to achieve a balance of viewpoints over a period of time, including of course an uninterrupted appearance by an opposition spokesman as in the planned "Loyal Opposition" format. (The Commission did, however, single out the war in Southeast Asia as an

issue calling for special attention. Because the President's talks on this issue were so frequent and pervasive, the three commercial networks "were required to afford a reasonable opportunity for the other side . . . geared specifically to the five addresses by the President" (A. 311).)

In this case CBS did not offer time to DNC for the purpose of responding to the President's speeches about the war; rather, no subject matter was specified by the networks. The Commission stated in this regard (A. 311):

However well-intentioned CBS was, the result here was simply the "political party" situation which we described at the outset.\*/ It was "party-oriented" rather than "issue-oriented," because of CBS' abstention in this critical area of issues to be covered.

\*/ While an incidental matter, we do note that the "party-oriented" nature of the program was aggravated by the DNC purchase of fund solicitation spots, to follow the program on many stations.

In regard to an argument made by CBS the Commission stressed that its ruling was not based on how "partisan" Mr. O'Brien's remarks were. Rather the thrust of its ruling was that the network having chosen not to exercise any degree of control over the content of the broadcast could not "avoid the



consequences of the 'political party' doctrine" when the O'Brien broadcast in fact ranged far beyond any issue presented by the President's recent speeches (A. 312). The Commission concluded by emphasizing that there was nothing contrary to the public interest in the DNC broadcast, but that given the context in which the program occurred and the issues actually covered, the "political party" corollary of the fairness doctrine must be invoked (A. 312-313).

#### ARGUMENT

Petitioners contend that the Commission erred in holding that the July 7, 1970 address by Lawrence F. O'Brien on behalf of DNC created an obligation on the part of the network to afford air time to a designated spokesman for the other major party. They argue that the holding represents an unwarranted departure from the usual fairness doctrine requirements and is at odds with a previously decided case.

Congress has delegated to the Commission the responsibility for seeing that broadcast stations "operate in the public interest and . . . afford reasonable opportunity for the discussion of conflicting views on issues of

public importance." 47 U.S.C. 315(a). It is well-settled that judicial review of Commission action in this area is limited to whether the agency's order is unreasonable or in contravention of the statutory purpose. As recently stated in Eugene J. McCarthy v. F.C.C., 129 U.S. App. D.C. 56, 390 F.2d 471 (1968), "in making this determination, 'this court is not at liberty to substitute its own discretion for that of administrative officers who have kept within the bounds of their administrative powers.'" Citing American Telephone and Telegraph Co. v. United States, 299 U.S. 232 (1936), and Udall v. Tallman, 380 U.S. 1 (1965); Farmers Educational and Cooperative Union v. WDAY, Inc., 360 U.S. 525 (1959); Philadelphia Broadcasting Co. v. F.C.C., 123 U.S. App. D.C. 298, 299-300, 359 F.2d 282, 283-284 (1966); 1 K. Davis, Administrative Law Treatise, §5.03 (1958). "This is particularly true," the Court emphasized, "where the Commission has been assigned a responsibility of the kind here involved." Id. We will show that the ruling of the Commission in this case falls well within the bounds of its administrative discretion.

THE COMMISSION COULD REASONABLY FIND THAT  
CBS SHOULD AFFORD A RIGHT OF REPLY TO A  
REPUBLICAN PARTY SPOKESMAN.

- A. The Commission Has Recognized Special  
Circumstances In Which The General  
Standard Of Fairness Is Not Sufficient  
To Assure Reasonable Opportunity For  
The Public To Receive Conflicting Views  
On Issues Of Public Importance.

This Court is familiar with the general formulation of the Commission's fairness doctrine. See Red Lion Broadcasting Co. v. F.C.C., 127 U.S. App. D.C. 129, 381 F.2d 908 (1967). In short, licensees have an obligation to devote a reasonable portion of broadcast time to the discussion of controversial issues of public importance, and in doing so to fairly present contrasting viewpoints held by responsible elements in the community. See Report on Editorializing, 13 F.C.C. 1246 (1949); Fairness Primer, 29 F.R. 10415 (1964). In complying with this requirement the licensee is given wide latitude "in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view." Report on Editorializing, supra, at 1251.

This carte blanche licensee discretion in achieving fairness has, however, been circumscribed in certain areas where it has been felt that the basic goals of fairness could be better gained by more specific means. First, there is the Congressionally imposed "equal opportunities" rule for political candidates contained in Section 315 of the Communications Act, 47 U.S.C. 315. There is also the "personal attack" rule, 47 CFR 73.123, which gives an individual who is personally attacked in the course of discussions of a controversial issue the chance to respond, the reason being that the objective of adequate presentation of all sides of an issue is best served by allowing those attacked to make the response. See 32 F.R. 10303 (1967); Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969). Similarly, the "political editorial" rule, 47 CFR 73.123(c), gives a candidate or his spokesman an opportunity to respond when a licensee editorially opposes him or endorses his opponent on the air. In all three of these special situations it is the responsibility of the licensee to ascertain whether either the identity of the speaker (i.e., a candidate for public office) or the content of his message brings into play one of the special corollaries of the fairness doctrine.

The "political party" rule enunciated in Nicholas Zapple, supra, represents a similar refinement of the general requirement of fairness. In that case the Commission issued an interpretative ruling dealing with the question of providing time for a spokesman for one political candidate after a spokesman for another candidate has appeared. The heart of the Commission's opinion is as follows, 23 F.C.C. 2d at 708:

Where a spokesman for, or a supporter of candidate A, buys time and broadcasts a discussion of the candidates or the campaign issues, there has clearly been the presentation of one side of a controversial issue of public importance. It is equally clear that spokesmen for or supporters of opposing candidate B are not only appropriate, but the logical spokesmen for presenting contrasting views. Therefore, barring unusual circumstances, it would not be reasonable for a licensee to refuse to sell time to spokesmen for or supporters of candidate B comparable to that previously bought on behalf of candidate A.

Thus the fairness doctrine has been made applicable to these political party situations in a quasi-"equal opportunities" fashion. The basis is the same as in the above-mentioned instances, namely, that certain factual situations may circumscribe the licensee's normal discretion in selecting a spokesman for a viewpoint or the general format in which the view is presented.

This requirement is clearly a reasonable concomitant to the public interest standard. As this Court stated in answer to the argument that the personal attack rule imposes a burden on the licensee, "this burden . . . is not an unreasonable one. The broadcasters' licenses are issued upon a finding by the Commission that the public interest will be served thereby, and thus, the licensees accept the responsibility of discharging what is in actuality their public trust." Red Lion Broadcasting Co. v. F.C.C., supra, 127 U.S. App. D.C. at 147, 381 F.2d at 926.<sup>4/</sup> Thus, petitioners' claim that CBS has observed "fairness" in its overall coverage of the issues touched on in the DNC broadcast misses the point. If, as the Commission found, the circumstances of the DNC broadcast gave rise to an obligation to present a spokesman designated by the opposite side, the fact that the same subject matter had been presented in other ways is not significant. We show next that the Commission could properly conclude that the "political party" rule set forth in Nicholas Zapple, supra, applied in the present case as well.

<sup>4/</sup> Under the personal attack rule, the licensee might have to provide free air time to the person attacked pursuant to the principle enunciated in Cullman Broadcasting Co., 40 F.C.C. 576 (1963). However, in the instant case the Cullman principle is inapplicable, thus lessening the burden on the licensee (A. 97); Nicholas Zapple, supra.

B. The Commission Could Reasonably Apply  
The "Political Party" Concept Enunciated  
in Nicholas Zapple To The Facts Of The  
Case.

The Commission held that the instant case was indistinguishable from the "political party" situation dealt with in Nicholas Zapple, supra. It pointed out (A. 308) that had CBS provided time to DNC during October or November of an election year to use as it wished, the network could plainly not refuse RNC the same opportunity on the ground that views contrasting to those expressed by the Democrats had already been presented in other ways by other spokesmen. As the Zapple letter had held, in such a situation the general requirement of fairness as enunciated in the Report on Editorializing is not sufficient to achieve real fairness, that a quasi-"equal opportunities" rule should apply. In the Commission's view the fact that the DNC broadcast occurred on July 7 rather than October 7 did not significantly alter the situation:

While there are obviously heightened responsibilities in this area when within an election period . . . , "electioneering" is a continuing process. . . . Stated differently, a licensee could not afford free time to one party to use as it wishes, relegate the other party to appearances on newscasts or other news-type shows . . . , and claim fairness was being met as long as he stopped this pattern within a few months of the election.  
(A. 309).



Since in the nature of things both major parties continuously contest for political advantage, in this regard the Commission's conclusion is both reasonable and realistic.

As we understand their position, petitioners do not disagree with the holding in Zapple, but contend (CBS Br. p. 28) that it is unreasonable to apply it "to responsive broadcasts on the very national issues discussed" by the President. But the O'Brien talk was not responsive, nor did CBS take any steps to see that it was (A. 92-93, 311). The Commission had recognized that the President's series of speeches on the war in Asia created an imbalance under the fairness doctrine and that "in such circumstances there must be a reasonable opportunity for the other side geared specifically to the five addresses" (A. 92).<sup>5/</sup> But with regard to the broadcast at issue here, the network simply turned over 25 minutes to DNC to use as the latter saw fit. Mr. O'Brien chose--as in the circumstances he had every right to--not to address himself to the Vietnam war (except in a

5/ The Commission made clear that Presidential appearances, except when "equal opportunities" applies during a quadrennial campaign, do not themselves come under the "political party" rule (A. 310). This is because the President's office is considered above politics in a sense, although his messages can on occasion be partisan. However, as indicated above, the general fairness doctrine does apply to Presidential appearances. Both CBS and DNC agree as to the propriety of this aspect of the Commission's decision.

very minor way) although "the President's speeches had largely focussed on this issue" (A. 311). Thus petitioners' attempt to undermine the Commission's reliance on Zapple by saying it should not apply to "responsive broadcasts" begs the question.

Nor is there merit to the contention (CBS Br. p. 28) that the Commission's "political party" ruling created "a new imbalance." Had the O'Brien speech been essentially the presentation of a contrasting viewpoint on the war, then a different question would have been presented; but because it dwelt essentially on other issues and because the broadcast came about under circumstances wherein CBS "simply turned the time over to the DNC for whatever use it might want to make of it" (A. 311), it was entirely reasonable for the Commission to invoke the "political party" rule enunciated in Zapple. The "imbalance" was brought about not by the Commission's ruling but by the network's refusal to accord RNC the same opportunity to appear over the air that it had extended to DNC.

No matter what CBS was hoping to accomplish, admittedly in good faith, what occurred was a "party-oriented" program rather than an "issue-oriented" one. This came about

not because of the partisan tone of the broadcast, as petitioners suggest, but because of CBS' abstention of control. Both petitioners in their briefs fail to grasp the meaning of this point. They both argue that according to the Commission's logic CBS could have dictated to DNC that the very same topics he covered and then CBS would have avoided the "political party" problem. This is simply not so. CBS' abstention got it into trouble, it is true, but only because of what then occurred. The Commission made this quite clear when it stated that "[t]he 'licensee supervision' called for, if CBS wished to avoid the consequences of the 'political party' doctrine, was as to what issue or issues were to be covered . . ." (A. 312). In other words, since the President's appearances over the previous eight months were almost exclusively devoted to the war issue,<sup>6/</sup> then CBS should have told DNC to address itself chiefly to that issue. It cannot have it both ways, i.e., turn over a period of time for the unrestricted use of the DNC and then insist that no similar obligation arises towards the RNC on the ground that the first broadcast was "responsive" to the President when in fact it was not.

6/ This is dramatically illustrated by the Commission's special ad hoc ruling in Part C of its August 18 order (not here under review) that the President's utterances on the war have been so pervasive that the networks must provide some uninterrupted prime time to antiwar spokesmen (A. 91-94).

The result reached by the Commission can be even more clearly appreciated by contrasting it with the Commission's ruling in the Letter to Hon. Wayne L. Hays, Comm. Ref. No. 8330-S, C-2105 (1968) (A. 237-239), which both petitioners have gone to such pains to try and make irreconcilable with the case under review. There CBS permitted Republican leaders to respond to President Johnson's State of the Union speech, which they did, ranging in a partisan fashion over the issues which the President had raised. The Commission affirmed CBS' refusal of a Democratic request for time to respond. The Commission held that the Republican leaders' program was simply part of CBS' efforts to achieve balanced coverage of the issues under the fairness doctrine, and as such the program did not give rise to any right to respond by the Democrats. In the instant case, the DNC broadcast of July 7 was not responsive to any recent Presidential appearances, something which CBS had the power to affect, thereby triggering the "political party" rule. The Commission cited the Hays ruling to show that it is not the partisan nature of the program which brings the "political party" rule into play, but rather the issues covered under the circumstances (A. 312). That this is so

HAYS  
CASE

1  
was  
responsive

is illustrated by the fact that President Nixon's 1970 State of the Union address, which was broadcast during the time period we are concerned with, was followed by a Democratic response to that speech, and that response did not activate the "political party" rule (A. 312). The response was partisan and the networks may well have not specified the issues to be covered, but the key is that the program was in fact responsive to the President's speech on the issues.

C. There Is No Merit To The CBS Contention  
That Its First Amendment Rights Were  
Abridged By The Commission's Ruling.

In response to CBS' argument that its First Amendment rights have been abridged by the Commission's ruling, the short answer is that if the "political party" ruling which CBS does not directly challenge is valid, CBS' complaint must fall. In Red Lion Broadcasting Co. v. F.C.C., supra, this Court answered a similar argument against the personal attack doctrine as follows, 127 U.S. App. D.C. at 145, 381 F.2d at 924:

The Fairness Doctrine impact arises, then, when in petitioners' exercise of their own judgment, they broadcast a program dealing with controversial issues of public importance. After having independently selected the controversial issue and having selected the spokesman for the presentation of the issue in accord with their unrestricted programming, the Doctrine, rather than limiting the petitioners' right of free speech, recognizes and enforces the free speech right of the victim of any personal attack made during the broadcast. Such an attack, the Doctrine directs, necessitates the petitioners' affording the maligned victim an opportunity to respond. Does such an obligation arising under these conditions deprive petitioners of any right guaranteed by the first amendment? I think not.

We believe that the Commission's ruling is reasonable and clearly related to the public interest. Furthermore, it is designed to maximize the public's right to be informed, which is in the end the real thrust of the First Amendment in this area. See Red Lion Broadcasting Co. v. F.C.C., supra; NBC v. United States, 319 U.S. 190 (1943); Carter Mountain Transmission Corp. v. F.C.C., 116 U.S. App. D.C. 93, 321 F.2d 359 (1963), cert. denied, 375 U.S. 951.

CONCLUSION

For the foregoing reasons, the Commission's orders should be affirmed.

Respectfully submitted,

RICHARD W. McLAREN,  
Assistant Attorney General,

RICHARD E. WILEY,  
General Counsel,

GREGORY B. HOVENDON,  
Attorney.

JOHN H. CONLIN,  
Associate General Counsel,

STUART F. FELDSTEIN,  
Counsel.

Department of Justice  
Washington, D. C. 20530

Federal Communications Commission  
Washington, D. C. 20554

March 1, 1971.





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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,655

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COLUMBIA BROADCASTING SYSTEM, INC., *Petitioner,*

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DEMOCRATIC NATIONAL COMMITTEE, *Petitioner,*

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On Petitions for Review of Orders of the  
Federal Communications Commission

---

**BRIEF FOR INTERVENOR  
REPUBLICAN NATIONAL COMMITTEE**

---

W. THEODORE PIERSON  
JAMES J. FREEMAN  
PIERSON, BALL & DOWD  
1000 Ring Building  
Washington, D. C. 20036

*Counsel for Republican  
National Committee*

United States Court of Appeals  
for the District of Columbia Circuit

ED MAR 1 1971

*Ethan J. Paulson*  
CLERK



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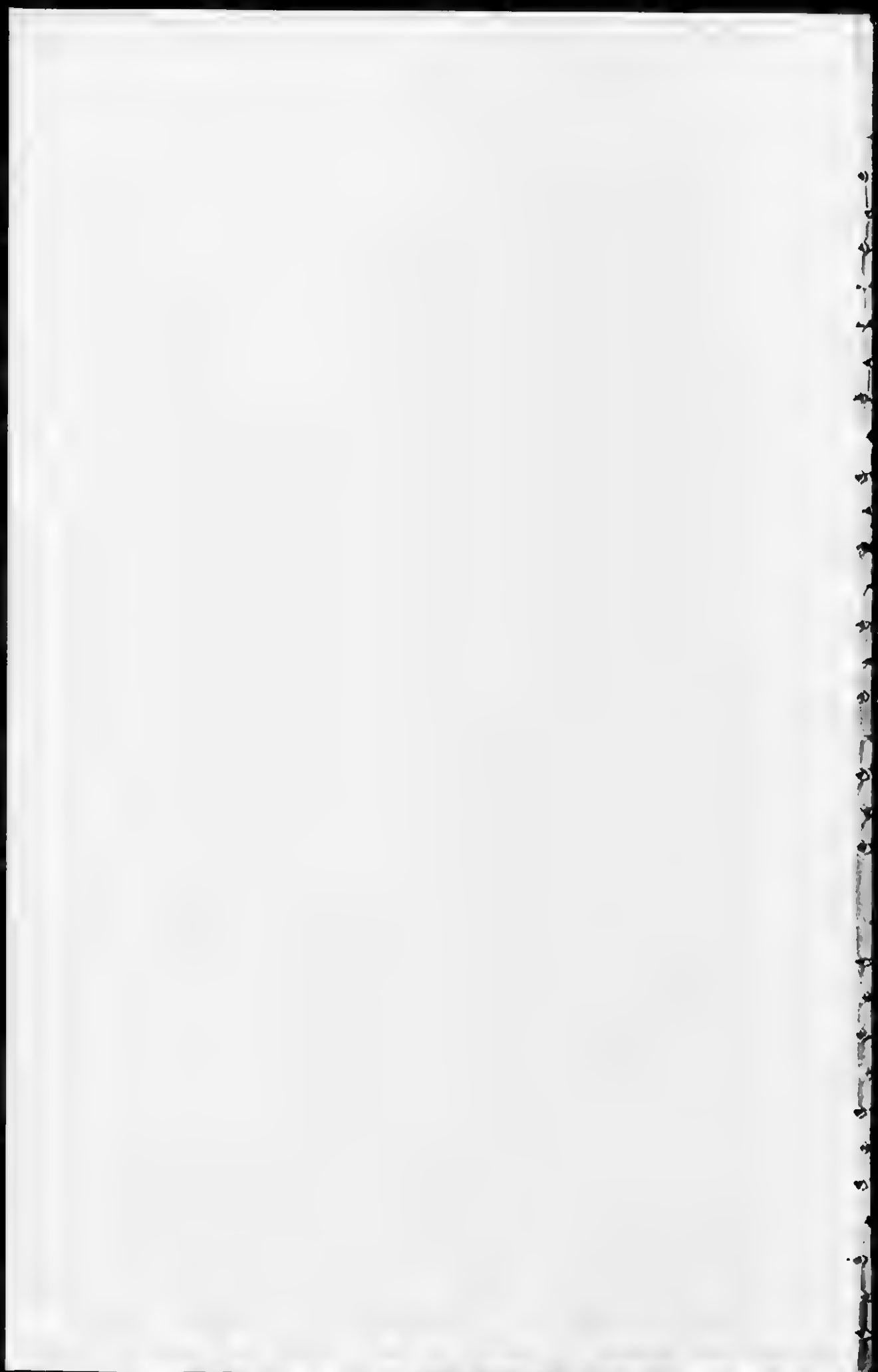
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47 C.F.R. § 73.120 .....	31
47 C.F.R. § 73.123 .....	31
47 C.F.R. § 73.290 .....	31
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## MISCELLANEOUS:

Appendix to the Briefs <i>Democratic National Com-</i> <i>mittee v. F.C.C.</i> , D.C. Cir. No. 24,537 .....	3, 24, 25-27
* Hearings on S.J.Res. 209 Before the Communica- tions Subcomm. of the Senate Committee on Commerce, 91st Cong., 2d Sess. (1970) .....	19-21, 22, 23
<i>The Report of the President's Commission on</i> <i>Campus Unrest</i> (1970) .....	17
Weekly Compilation of Presidential Documents, Vol. 5 (1969) and Vol. 6 (1970) .....	19

\* Cases or authorities chiefly relied upon are marked by  
asterisks.





IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No.24,655

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COLUMBIA BROADCASTING SYSTEM, INC., *Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION and  
UNITED STATES OF AMERICA, *Respondents,*  
REPUBLICAN NATIONAL COMMITTEE,  
DEMOCRATIC NATIONAL COMMITTEE, *Intervenors.*

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No. 24,659

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DEMOCRATIC NATIONAL COMMITTEE, *Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION and  
UNITED STATES OF AMERICA, *Respondents,*  
REPUBLICAN NATIONAL COMMITTEE, *Intervenor.*

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On Petitions for Review of Orders of the  
Federal Communications Commission

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BRIEF FOR INTERVENOR  
REPUBLICAN NATIONAL COMMITTEE

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## ISSUES PRESENTED FOR REVIEW

In the opinion of Intervenor, Republican National Committee, the following issues are here presented for review:

1. Whether it was a reasonable exercise of Commission discretion to differentiate between Presidential broadcasts to discuss *public issues* and broadcasts by political parties in which they are permitted to use such time for any purpose they wish.
2. Whether the Commission was reasonable in characterizing the O'Brien broadcast as party-oriented because of the lack of any licensee supervision over the issues to be discussed.

[This case has not previously been before this Court.]

## REFERENCES TO RULINGS

The basis for the orders of the Commission under review in this case is set forth in two opinions of the Commission:

Memorandum Opinion and Order released August 18, 1970 (FCC 70-881), ¶¶ 52-59 (A. 96-98).<sup>\*</sup> The portion of the August 18 Memorandum Opinion and Order under review is reported at 25 F.C.C. 2d 283, 299-301 (1970).

Memorandum Opinion and Order released September 24, 1970 (FCC 70-999) (A. 303-313), disposing of petitions for reconsideration of the August 18 Memorandum Opinion and Order. The September 24 Memorandum Opinion and Order is reported at 25 F.C.C. 2d 739 (1970).

## COUNTERSTATEMENT OF THE CASE

The dispute now before this Court was triggered by a telegram from Dr. Frank Stanton, President of Columbia

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<sup>\*</sup> "A. ———" references are to the Appendix of materials from the Record before the Commission, filed by Petitioners herein.

Broadcasting Systems, Inc. (CBS) to Lawrence F. O'Brien, Chairman of the Democratic National Committee (DNC), on June 22, 1970, a few short months before the important November Congressional elections. The primary purpose of Dr. Stanton's telegram was ". . . TO OFFER THE DEMOCRATIC NATIONAL COMMITTEE TWENTY FIVE MINUTES OF FREE TIME ON THE CBS TELEVISION AND RADIO NETWORKS, AT 10 PM EDT, JULY SEVEN, FOR PRESENTATION OF THE COMMITTEE'S VIEWS. . . ." <sup>1</sup> The telegram did not describe the format of the proposed broadcast, specify the parties to appear or identify the issues to be discussed. Indeed, it did not require DNC to discuss any issues at all. Dr. Stanton also announced that ". . . FROM TIME TO TIME DURING THE COURSE OF THE YEAR WE WILL MAKE AVAILABLE FREE TIME TO THE PRINCIPAL OPPOSITION PARTY . . . UNDER THE OVERALL TITLE 'THE LOYAL OPPOSITION'." <sup>2</sup> The telegram further advised that CBS would accept paid political announcements for the purpose of soliciting funds on behalf of political parties without confining those announcements to campaign periods as had been its previous practice. <sup>3</sup> On the same day that CBS offered DNC *free* time, in another proceeding, it opposed a Request for Declaratory Ruling filed by DNC which sought to require stations and networks to *sell* time to groups such as DNC for presentation of these groups' views. This asserted "right of access" was vigorously opposed by CBS. <sup>4</sup>

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<sup>1</sup> Telegram from Frank Stanton, President of CBS, to Mr. O'Brien, June 22, 1970, A. 20.

<sup>2</sup> *Id.* at A. 21.

<sup>3</sup> *Id.* at A. 20.

<sup>4</sup> Comments of Columbia Broadcasting System, Inc. filed June 22, 1970, contained in the Appendix to the Briefs in *Democratic National Committee v. F.C.C.*, D. C. Cir. No. 24,537 at 35.

On July 2, 1970, upon learning of the CBS offer of free broadcast time, Rogers C. B. Morton, Chairman of the Republican National Committee (RNC), telegraphed Dr. Stanton and sought to clarify the intent of CBS especially in view of its departure from principles it had long espoused of maintaining control over its public affairs programming. Chairman Morton particularly expressed alarm over DNC's apparent right to use such time for any purpose it pleased.<sup>5</sup> The July 7 broadcast confirmed Chairman Morton's suspicion. The DNC presented its own chairman who used the 25 minutes to play short, out-of-context excerpts from past televised appearances of President Nixon dating all the way back to his nomination acceptance speech in 1968. Chairman O'Brien's broadcast contained no significant discussion of the issues or of their solution, but was an attack on the President and his party. The broadcast was followed on many stations, including those owned by CBS, by solicitations for funds to elect Democratic candidates in the upcoming Congressional elections.

After the broadcast, Chairman Morton requested comparable free time to respond to this "unprecedented, inaccurate personal attack on the President of the United States."<sup>6</sup> No response having been received to either telegram, RNC, on July 13, 1970, petitioned the Commission to require CBS to afford RNC comparable time to respond to the O'Brien broadcast. RNC pointed out that CBS's offer "permitted DNC to use the time for any purpose, including mere partisan advocacy and party propaganda";<sup>7</sup> and that Mr. O'Brien's speech was, in fact, "a political attack on the President and his party" which

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<sup>5</sup> Telegram from Rogers C. B. Morton to Frank Stanton, July 2, 1970, A. 13-16.

<sup>6</sup> Telegram from Rogers C. B. Morton to Frank Stanton, July 8, 1970, A. 17.

<sup>7</sup> Petition of the Republican National Committee for Relief Against CBS, A. 3.

thus raised a new issue requiring balance, i.e. which party should govern, and was not a discussion of issues raised by the President in his prior appearances.<sup>8</sup>

On July 15, CBS responded to Chairman Morton's letter and refused to grant RNC time<sup>9</sup> and on July 23, 1970, CBS responded to RNC's Petition.<sup>10</sup>

Upon completion of the pleadings, the Commission on August 18, 1970, released its decision here under review granting RNC's request and directing CBS to give comparable time to RNC for reply to the matters raised in the O'Brien broadcast.<sup>11</sup> The same opinion also disposed of several other complaints under the Fairness Doctrine primarily concerning the Vietnam War. Three groups, Committee for Fair Broadcasting, Fourteen U. S. Senators and Business Executives Move for Peace argued that network coverage of the Presidential addresses on Vietnam required that they be given comparable time and format to present their opposing views. The networks, including CBS, opposed this request urging that coverage of these Presidential appearances was traditional and that the choice of opposing spokesmen and format must be left to the reasonable discretion of the licensee. The Commission refused to order the networks to grant time to these specific complainants or to apply an "equal opportunities" requirement with regard to Presidential and other official appearances. The Commission did hold, however, that format should be considered in determining whether a licensee had achieved over-all fairness. Accordingly, in light of the Presidential addresses on Vietnam, the Commission required the networks to make ad-

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<sup>8</sup> *Id.* at A. 4.

<sup>9</sup> CBS letter to Rogers C. B. Morton, July 15, 1970, A. 45.

<sup>10</sup> Response of CBS to Republican National Committee Petition, A. 32.

<sup>11</sup> Memorandum Opinion and Order, FCC 70-881, released August 18, 1970, Part E, A. 74, 96.

ditional uninterrupted time available to spokesmen selected by the networks for discussion of the Vietnam issue.<sup>12</sup>

Unlike its treatment of other complaints then before it, where the Commission upheld the licensee's broad discretion in balancing issues raised during Presidential appearances, in ruling on RNC's complaint the Commission found that while CBS had apparently intended the O'Brien broadcast to deal with issues treated in the recent Presidential appearances, CBS had failed to exercise journalistic supervision to assure fulfillment of its purpose as exemplified by the fact that the O'Brien broadcast "only referred briefly to the Indochina War issue" upon which the recent Presidential addresses had concentrated.<sup>13</sup> As a result, the instant situation "differed from the case where CBS selected the spokesmen to speak expressly on a subject" but fell squarely within the political spokesmen corollary to the Fairness Doctrine, requiring equal treatment of opposing political groups, as most recently expressed in the Commission's *Letter to Nicholas Zapple*, 23 F.C.C. 2d 707 (1970).<sup>14</sup> Thus, unlike the other cases where the Commission refused to require the networks to grant access to specific spokesmen, CBS was here required to grant time to RNC or another partisan Republican spokesman.

At this juncture, the DNC filed a Petition for Reconsideration of the Commission's Order relating to this matter. The thrust of its Petition was merely that the President had previously discussed the issues allegedly treated in the O'Brien broadcast. As noted in RNC's response, DNC also attempted to reargue its already-rejected claim of a DNC right of access to the broadcast media over and

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<sup>12</sup> *Id.* at A. 93.

<sup>13</sup> *Id.* at A. 96.

<sup>14</sup> *Id.* at A. 97.

beyond the Fairness Doctrine.<sup>15</sup> More importantly, RNC noted that DNC had failed to rebut or discuss the Commission's conclusion that the O'Brien broadcast was party, not issue, oriented.

CBS also petitioned for reconsideration of the Commission's Order. Its Petition, like that of DNC, sought to demonstrate that the issues allegedly discussed by Mr. O'Brien had, in fact, been raised by administration spokesmen on previous broadcasts.<sup>16</sup> Further, CBS argued that the *Zapple* ruling was applicable only in the political campaign situation, and thus not relevant to the instant case. CBS also sought to demonstrate that Presidential discussion of the issues had, on occasion, been partisan. Finally, CBS argued that the Commission ruling was inconsistent with an earlier, allegedly controlling case, *Letter to Wayne Hayes*.<sup>17</sup>

RNC also responded to CBS's Petition<sup>18</sup> pointing out that the Commission's Decision was not based on any imbalance created by the DNC broadcast in regard to the discussion of public issues previously raised by the President, but solely on the ground that the DNC broadcast was party oriented. RNC also noted that, after a thorough scouring of the President's broadcast appearances, CBS had been able to produce a bare handful of comments that were even remotely partisan; and that the Presidential speeches, taken in context, could scarcely be characterized as *party* rather than *issue* oriented. The Replies of DNC and CBS merely reiterated their earlier pleadings.

<sup>15</sup> Opposition of RNC to DNC Petition for Reconsideration, A. 193.

<sup>16</sup> The Appendix attached to CBS's Petition referred only to administration views carried by CBS. Presumably CBS had also previously presented contrary views which it could also cite.

<sup>17</sup> Letter from Chairman Rosel H. Hyde to Hon. Wayne Hays, Commission Ref. No. 8330-S, C2-105 (1968), reprinted at A. 237-39.

<sup>18</sup> Opposition of RNC to CBS Petition for Reconsideration, A. 271.



In its September 24, 1970, Decision denying the Petitions for Reconsideration,<sup>19</sup> the Commission expressed surprise at CBS's and DNC's misinterpretation of the basis for its action. The Commission noted that Presidential appearances such as a veto message or discussion of the Cambodian operation do not constitute political appearances within the scope of the *Zapple* ruling. Accordingly, the opposition party is not entitled to receive a "quasi-equal opportunity" for reply. The Presidential appearances were, however, held to be subject to the general fairness requirement that both sides of the *issues* discussed in such appearances must be presented. But where the station or network does not exercise its journalistic supervision over supposedly responsive broadcasts to specify that the issues raised by the President are to be discussed and merely turns time over to the opposition party without restrictions on its use, then it has crossed the line and the subsequent broadcast falls within the political spokesman corollary of the Fairness Doctrine which requires the station or network to afford the other party an opportunity to reply. The Commission made it crystal clear that had CBS identified the *issues* requiring balancing due to the Presidential appearances and supervised the broadcast to assure that it focused on those *issues*, the *Zapple* ruling would be inapplicable.

## ARGUMENT

### I. PRELIMINARY STATEMENT

This case tests, in the first instance, the validity of a particular application of the Fairness Doctrine in a situation where the CBS television network gave the Democratic National Committee 25 minutes of free broadcast time for its unrestricted partisan use, but refused to afford the Republican National Committee a comparable opportunity for a partisan response.

<sup>19</sup> Memorandum Opinion and Order, FCC 70-999, released September 24, 1970, A. 303.

This, however, does not describe the limits of the instant controversy for, unless the Commission's Order is upheld, CBS's avowed policy to continue these broadcasts will inhibit the use of broadcast media by the President and other elected officials who make frequent "Reports to the People," with a resultant diminution of communication between our elected leaders and the nation at just that time in our history when the need for such communication has never been more urgent. Nothing could be better calculated to widen the so-called "credibility gap," which can rob leaders of leadership.

The President, like many elected officials, may appear on television during his term of office for varying purposes and with varying results under the Fairness Doctrine or Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. § 315 (1964).

He may seek, as he must if he is to lead, through press conferences, interviews and addresses, to impart understanding of the problems and perils confronting the Nation and to explicate the things he has or has not done and will or will not do to mount a successful response to such challenges. In this way, he performs the vital leadership function to which he was elected. Always it will be a Republican or a Democratic or an X party President speaking, but he will be speaking primarily as PRESIDENT and not as a partisan leader of the Republican, Democratic or X Party.

On the other hand, if the President is running for reelection, he normally employs television in many ways specifically to advance his candidacy. The primary emphasis in this situation is his representation of his *party* and not of the office he holds—he speaks as a candidate for office, not an an office holder.

Further, during political campaigns in which he is not himself a candidate, he may use the media for purely partisan purposes in support of the party's candidates.

President Nixon's speech in Phoenix, which was re-broadcast on the eve of the 1970 Congressional elections, is an example of this. There he was speaking primarily as party leader and not as President.

The latter two of the three enumerated situations are not involved in this case. We concede that were it a case of his own candidacy, Section 315 of the Communications Act assures the opposing candidates of equal time, unrestricted as to its use. Were it the case of his non-candidacy but support of the candidates of his party, the Fairness Doctrine, and more particularly its "political spokesman" corollary, would entitle the opposing party to equivalent time.

The case at bar, however, involves uses by the President of television to attempt to illuminate the issues facing the Nation and to explain his course with respect to those issues—sheer acts of leadership. He was not a candidate for re-election. The broadcasts were not used to endorse Republican Party candidates in an election. Rather these appearances to discuss critical issues, primarily the Vietnam War, were basically neutral as to party and dealt, as is almost always the case, with issues on which there is division within each party. Disagreement on such issues comes not only from members of the Democratic Party but from within the President's own party as well. Balance in the broadcast treatment of such issues comes from persons who disagree on the *issues* regardless or in spite of their party affiliation.

In the past CBS has sought to achieve compliance with the Fairness Doctrine by balancing the President's views on various issues with the presentation of contrasting views by spokesmen selected precisely because they espoused a different position.<sup>20</sup> But CBS proceeded in this case to treat the Presidential presentations as party-oriented, candidate-supporting uses and proposed to grant

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<sup>20</sup> See discussion *infra*, pp. 25-27.

time for a series of broadcasts by DNC's Chairman with no restrictions as to its use, with no requirement that such uses be limited to the issues presented by the leadership-appearances of the President. The result, as expected, was a purely political attack on the President and his party. As a consequence, the effective use of television by elected governmental leaders for the vital purpose of informing their electorates, together with the illumination of the issues through presentation of appropriate counter-spokesmen on these issues, was seriously jeopardized. If an official's use of broadcast media to report to his electorate on issues of importance results in broadcasts by others of non-issue oriented partisan diatribes, he will be forced to avoid use of the media to escape the degradation of his appearance into a political circus—and the great value of television as a means of serious communication between the elected leadership and the sovereign people of our political communities will be grievously diminished. It was primarily to prevent such a situation that RNC initiated this action.

The Commission's Decision in the instant case protects the integrity of such leadership-use of the broadcast media. It does not, however, insulate the *issues* raised by such presentation from rebuttal, even of the most vigorous, robust and partisan kind. Rather, it merely emphasizes that the licensee must see to it that such rebuttal is in fact rebuttal and thus germane to the *particular issues* raised by the elected official's presentation. The failure to do so will require the licensee to balance any new issues raised in the response and, in addition, where the response is by a political spokesman, the failure to do so will require the licensee to provide comparable time to opposing spokesmen for reply.

The Commission's Order does not preclude CBS or any licensee from making time available to a political party for whatever purpose it chooses, but it does require that comparable time must be given to the other party on the

same terms. And because of this requirement, it is likely that stations seeking to balance views previously presented will require political spokesmen for opposing views to stick to the issues initially presented, except where they decide that the public interest would be benefited by giving time to *both* parties for unrestricted partisan use. As a consequence, the licensee's wide-ranging discretion is preserved, subject only to the reasonable requirements of the Fairness Doctrine.

**II. IT IS A REASONABLE EXERCISE OF COMMISSION DISCRETION TO APPLY THE FAIRNESS DOCTRINE DIFFERENTLY TO THE DISCUSSION OF PUBLIC ISSUES THAN TO APPEARANCES BY POLITICAL SPOKESMEN.**

The principles of the Fairness Doctrine are set forth in countless decisions but they may be summarized as the "requirement that discussion of public issues be presented on broadcast stations, and that each side of these issues must be given fair coverage." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 369 (1969). In its ordinary application the Fairness Doctrine governs the presentation of issues and a licensee presenting one side of a controversial issue of public importance must take all necessary steps to broadcast contrasting views on the same issue. The initial determination of whether an issue is important and, if it is, what countervailing views should be expressed is a matter for the licensee's good faith discretion. Only after the licensee has made these determinations does it select a spokesman to present these views. Anyone may, of course, request the Commission to review the licensee's exercise of its discretion.

A statutory provision related to but distinct from the Fairness Doctrine governs treatment of opposing candidates for public office and is contained in Section 315 of the Communications Act of 1934, which provides that a station permitting use of its facilities by one candidate

must, with certain exceptions, also make its facilities available to all other candidates for the same office on a comparable basis. But as the Supreme Court in *Red Lion* pointed out, Section 315 is limited in effect:

"The section applies only to campaign appearances by candidates, and not by family, friends, campaign managers, or other supporters. Without the fairness doctrine, then, a licensee could ban all campaign appearances by candidates themselves from the air and proceed to deliver over his station entirely to the supporters of one slate of candidates, to the exclusion of all others. In this way the broadcaster could have a far greater impact on the favored candidacy than he could by simply allowing a spot appearance by the candidate himself. It is the fairness doctrine as an aspect of the obligation to operate in the public interest, rather than § 315, which prohibits the broadcaster from taking such a step." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. at 384 (1969).

Thus, in *Times-Mirror Broadcasting Company*, 40 F.C.C. 531 (1962) the Commission held:

". . . fairness requires that when a broadcast station permits, over its station facilities, a commentator or any person other than a candidate to take a partisan position on the issues involved in a race for political office and/or to attack one candidate or support another by direct or indirect identification, then it should send a transcript of the pertinent continuity in each such program to the appropriate candidates immediately and should offer a comparable opportunity for an appropriate spokesman to answer the broadcast." 40 F.C.C. at 533.

Cf. *Arkansas Radio and Equipment Company*, 40 F.C.C. 1070 (1960) (comparable coverage of Republican & Democratic nominating conventions required where possible). This policy was reiterated in the case on which the Commission based its Decision here under review, *Letter to*

*Nicholas Zapple*, 23 F.C.C. 2d 707. There the Commission held that where a station or network gives time to a spokesman for one candidate comparable time must be afforded spokesmen for all other candidates for the same office. The Commission also added a proviso that, as under Section 315, in these "political spokesmen" cases a licensee would only be required to treat each side alike—if one candidate paid for the time used, his opponent need not be given free time. *Id.* at 708.

The factual premise of the Commission's Decision in the instant case rests on its characterizations of the President's appearances and the July 7 O'Brien broadcast. The former it found to be subject to the general fairness doctrine, the latter to the political spokesman corollary of that doctrine. If these characterizations constituted a reasonable exercise of the Commission's discretion, as we believe they did, then there can be no question but that the Commission properly required CBS to afford RNC time.

### III. THE COMMISSION PROPERLY HELD THAT PRESIDENTIAL APPEARANCES, OUTSIDE OF POLITICAL CAMPAIGNS, TO DISCUSS PUBLIC ISSUES ARE SUBJECT TO THE FAIRNESS DOCTRINE, NOT THE POLITICAL SPOKESMAN COROLLARY.

As noted above the President utilizes the broadcast media for a wide variety of purposes. When the President is running for re-election, his broadcast appearances, with specified exceptions, are fully subject to the equal opportunities requirement of Section 315 of the Communications Act, even where the licensee or network wishes to cover such appearances pursuant to its bona fide news judgment. See *Columbia Broadcasting System, Inc.*, 40 F.C.C. 395 (1964).<sup>21</sup>

<sup>21</sup> Section 315 permits the President, even when a candidate for re-election, to use broadcast facilities to advise the people about

[Footnote continued on page 15]



Moreover, it has never been suggested that political speeches or appearances by the President in support of other candidates would not be governed by the political spokesman corollary to the Fairness Doctrine. Thus, the recent sale of time to present the President's speech in Phoenix in support of Republican candidates in the November elections was balanced by the sale of time for presentation of Senator Muskie's election-eve discourse. Contrary to the suggestion in CBS's brief (p. 28, n. 8), RNC does not suggest for a moment that this Presidential appearance was exempt from the political spokesman rule or that RNC should have subsequently been afforded time to respond to Senator Muskie. In these broadcasts, each party was treated alike in scrupulous observance of the political spokesman corollary to the Fairness Doctrine.<sup>22</sup>

Nor is it ordinarily difficult to determine which Presidential speeches are political and which are not. The White House customarily advises the media whether a particular Presidential appearance is political or not and provides other information to assist the media in arranging any coverage desired. In so doing, the White House follows consistent practice; see *e.g.* *Letter to California Democratic State Central Committee*, 40 F.C.C. 501 (1960).

The third type of appearance is the kind involved in this case.<sup>23</sup> In exercising his Constitutional functions, the

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<sup>22</sup> [Continued]

critical events without equal opportunity rights accruing to his opponent. *Republican National Committee*, 40 F.C.C. 408, *aff'd per curiam* by an equally divided Court by order entered Oct. 27, 1964, *sub nom.* *Goldwater v. FCC*, Case No. 18,963 (D.C. Cir.), *cert. denied*, 379 U.S. 893 (1964).

<sup>23</sup> It is significant that in neither case, to our knowledge, did the networks place any restrictions on the use of the purchased time by the two political parties.

<sup>24</sup> Purely ceremonial appearances such as the lighting of the national Christmas tree do not bring the Fairness Doctrine into play and are hence irrelevant to this case.

President must communicate with the people he serves. The President, however, has only such access to the media as they choose to afford him. Except in time of national emergency, he has no Constitutional or other power to compel any broadcast station to carry any speech. Nevertheless, because of its inherent newsworthiness, an appearance by any President frequently warrants media coverage.

Various formats are employed in such appearances. In press conferences and news interview programs the President has only limited control over the subject matter and the direction of the discussion. Presidential speeches, on the other hand, are solely within the President's control and the networks do not presume to determine the issues to be addressed or their treatment. Nevertheless, the media, who with but the rarest exceptions are advised of the nature of each appearance, exercise their own journalistic judgment as to the newsworthiness of the matters to be discussed in deciding whether to cover it. Thus, the President delivers literally hundreds of addresses each year many of which are not carried by any network or station.

Media coverage of the President is not the result of the balancing required by the Fairness Doctrine but of his inherent newsworthiness. Such Presidential appearances to discuss public issues to not create any reply rights for specific political opponents, except where the President is himself a candidate for re-election, but they have long been held subject to the general Fairness Doctrine requirement that opposing views on issues discussed must be presented, *Letter to California Democratic Central Committee, supra*; *Letter to Republican National Committee*, 40 F.C.C. 625 (1964); *Letter to Blair Clark*, 11 F.C.C.2d 511 (1968). This was, of course, also the Commission's holding in another part of the case here appealed where it denied claims by various anti-war groups that the media should be required to permit them

to personally respond to Presidential speeches on Vietnam but emphasized the networks' responsibility to present additional contrasting views *on this issue* by appropriate spokesmen of the networks' choosing.<sup>24</sup>

Since he is head of his party, a Presidential appearance in which he discusses issues may also be said to constitute implicitly a defense or endorsement of his party as well as his policies. But this is only incidental. The President's role in explaining the issues and problems confronting the nation and the steps he has taken or will take to resolve them is done as Head of State, not as party leader. It is the awesome responsibility for leadership imposed by his Constitutional functions that elevates the President from the role of party advocate or partisan functionary.

The President's Commission on Campus Unrest aptly expressed the supra-party nature of the Presidency and the essentiality of the President's being able to communicate with the Nation:

"As the leader of all Americans, only the President can offer the compassionate, reconciling moral leadership that can bring the Country together again. Only the President has the platform of prestige to urge all Americans, at once, to step back from the battlelines into which they are forming." *The Report of the President's Commission on Campus Unrest* at 231 (1970).

To allow a President's discussion of vital issues to be followed by a party oriented broadcast not even responsive to the issues raised would seriously impair the President's ability to meet these responsibilities and would ultimately result in either the degradation of his broadcast appearances into purely political speeches or, as is more likely, the elimination of such appearances altogether.

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<sup>24</sup> Memorandum Opinion and Order, August 18, 1970, A. 74, 88-90.

**IV. THE COMMISSION PROPERLY RELIED ON CBS'S LACK OF JOURNALISTIC SUPERVISION IN CHARACTERIZING THE O'BRIEN BROADCAST AS PARTY-ORIENTED.**

**A. CBS Failed to Exercise Journalistic Supervision Over the O'Brien Broadcast.**

Neither CBS nor DNC appear to claim that CBS exercised any journalistic supervision over the O'Brien broadcast. Indeed CBS appears to eschew such supervision as a form of censorship. As discussed in the following section, the exercise of such supervision has long been the practice of responsible broadcasters, including CBS, and involves no censorship. Although the absence of journalistic supervision in this case is not in dispute, the effect of CBS's abstention here demonstrates the propriety of the Commission's determination that the O'Brien broadcast was inherently party oriented precisely because there was no such supervision.

The terms of CBS's offer of time are clear. CBS offered "... THE DEMOCRATIC NATIONAL COMMITTEE TWENTY-FIVE MINUTES OF FREE TIME ON THE CBS TELEVISION AND RADIO NETWORKS, AT TEN PM, EDT, JULY SEVEN, FOR PRESENTATION OF THE COMMITTEE'S VIEWS. . . ." <sup>25</sup>

We submit that by the very terms of the offer, which contained no specification of the issues to be discussed or the spokesman, but offered time for any purpose, CBS abdicated any responsibility for the broadcast and foreswore any journalistic supervision over it.

The actual broadcast reflects the complete control granted to DNC. RNC has attempted no detailed analysis of the broadcast but rather has submitted a full transcript together with the fund solicitations following it for

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<sup>25</sup> Telegram from Frank Stanton to Mr. O'Brien, June 22, 1970, A. 20.

the Commission's review.<sup>26</sup> The salient features of the broadcast were the following:

- 1) Although CBS states that the 14 prime-time appearances by President Nixon during his first 18 months in office led it to offer DNC time,<sup>27</sup> Chair-

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<sup>26</sup> A. 23-31, A. 212-217.

<sup>27</sup> Response of CBS to Republican National Committee Petition, A. 32, 39. These 14 appearances were not specifically identified by CBS but indisputably they were the following five press conferences:

<u>Date</u>	<u>Time</u>
3- 4-69	9:00 pm
6-19-69	7:00 pm
12- 8-69	9:00 pm
1-30-70	6:30 pm
5- 8-70	10:00 pm

And the following speeches:

<u>Date</u>	<u>Time</u>	
5-14-69	10:00 pm	Vietnam
8- 8-69	10:00 pm	Welfare Reform
11- 3-69	9:30 pm	Vietnam
12-15-69	6:00 pm	Vietnam
1-26-70	9:00 pm	HEW Veto
4-20-70	6:00 pm	Vietnam
4-30-70	9:00 pm	Cambodia
6- 3-70	9:00 pm	Cambodia
7- 1-70	10:00 pm	Interview re Foreign Policy

SOURCE: Weekly Compilation of Presidential Documents, Vol. 5 (1969) and Vol. 6 (1970) at various pages.

President Nixon's use of the broadcast media is certainly not extraordinary. Statistics provided by Julian Goodman, President of NBC, before the Subcommittee on Communications of the Senate Commerce Committee compare President Nixon's appearances on NBC with those of his three immediate predecessors:

[Footnote continued on page 20]

TABULATION OF NUMBER OF PRESIDENTIAL APPEARANCES ON NBC  
TELEVISION NETWORK DURING 1st 18 MONTHS IN OFFICE\*

	6-11 pm		Other time		Total broadcast time	
	Total	News Conf.	Other	News Conf.	Hours	Minutes
Eisenhower (2d term), Jan. 21, 1957 to July 20, 1958 .....	15	0	7	1	7	30
Kennedy, Jan. 20, 1961 to July 19, 1962 .....	47	3	4	31	27	12
Johnson, Nov. 22, 1963 to May 21, 1965 .....	40	0	11	12	17	29
Nixon, Jan. 20, 1969 to July 19, 1970 .....	28	5	10	5	16	17

\* Excluding regularly scheduled news programs, paid political broadcasts, nominating conventions, and ceremonial occasions.

[Footnote continued on page 21]

man O'Brien's broadcast concentrated not on recent Presidential appearances but on very old ones including the President's Nomination Acceptance Speech (August 8, 1968) and his Inaugural Address (Jan. 20, 1969).

- 2) While the President's recent speeches, as duly noted by the Commission,<sup>28</sup> had concentrated largely on the Vietnam war, the O'Brien broadcast contained but a two-minute excerpt on that issue.
- 3) The O'Brien broadcast generally failed to present any meaningful discussion of the issues but was a blatantly partisan attack inaugurating the campaign for the upcoming Congressional elections. This was underscored by the solicitations broadcast over many stations, including CBS's, at the conclusion of the broadcast which sought funds "to re-elect Democratic majorities in Congress this year."<sup>29</sup>

The fact that the O'Brien broadcast does mention certain issues of public importance (although it does not discuss them) does not make it less a party-oriented broadcast. Rather, the O'Brien presentation was closely akin to certain types of broadcasts which under the guise of providing entertainment or instruction actually make a not so subtle commercial pitch.<sup>30</sup> Indeed, the ease with which

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<sup>27</sup> [Continued]

As indicated, President Nixon has made far fewer television appearances and used less total broadcast time than either of his Democratic predecessors. *Hearings on S. J. Res. 209 Before the Communications Subcom. of the Senate Committee on Commerce*, 91st Cong., 2d Sess., at 74 (1970).

<sup>28</sup> Memorandum Opinion and Order, August 18, 1970, A. 74, 96.

<sup>29</sup> A. 212.

<sup>30</sup> Columbus Broadcasting Co., Inc., 18 P. & F. Radio Reg.2d 684 (1970); Multimedia, Inc., 18 P. & F. Radio Reg.2d 687 (1970).



a partisan pitch may be confused with an ostensible discussion of important issues is vividly demonstrated by the fund solicitations referred to above. Like the O'Brien broadcast, they too mention high interest rates, employment and inflation but no suggestion has been made heretofore that these solicitations contribute to the balance envisioned by CBS.<sup>31</sup>

Indeed, the orientation of the broadcast was so patent that Commissioner Nicholas Johnson specifically concurred "given the content of the DNC program."<sup>32</sup> Moreover, in the hearing on Senate Joint Resolution 209 which proposed to provide specific broadcast access to Congress, Dr. Stanton himself indicated that the O'Brien broadcast had fallen far short of CBS's hopes:

"SENATOR GRIFFIN. A purely partisan political attack by the chairman of the Democratic committee is not going to be answered as far as you are concerned? On your time?

"DR. STANTON. Not in the format that you are talking about.

"SENATOR GRIFFIN. Do you think that is fair?

"DR. STANTON. If this were to persist, if this is the way the 'Loyal Opposition' broadcast series develops, I think we would have to reconsider."<sup>33</sup>

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<sup>31</sup> The only distinctions between the body of the broadcast and the solicitations, it seems to us, lies in the fact that the broadcast was slightly more subtle and that the solicitations were paid for. Since CBS has represented that it will accept similar paid solicitations by RNC, its carriage of the DNC commercials comports with the Fairness Doctrine as set forth in the *Zapple* ruling and the propriety of CBS's carriage of these paid solicitations is not here an issue.

<sup>32</sup> Memorandum Opinion and Order, August 18, 1970, A. 74, 116 (concurring opinion).

<sup>33</sup> *Hearings on S. J. Res. 209 Before the Communications Subcom. of the Senate Committee on Commerce, 91st Cong., 2d Sess., at 65 (1970).*

And again:

"SENATOR GRIFFIN. But aside from that, aren't you forcing the President of the United States into refraining from communicating with the American people as President? Or if he is going to communicate with the American people and subject himself to a partisan attack, then he has got to use the time for political purposes himself, and speak as the head of his party, rather than as President of all of the people of the United States? Do we really want to do that?

"DR. STANTON. Senator Griffin, if that is how the 'Loyal Opposition' concept will end up, then we will find another formula."<sup>34</sup>

Thus, while CBS may well have intended, as alleged, that the DNC broadcast respond to the President on the issues, the "formula" actually used, a gift of time to DNC to use as it wished, precluded, in the Commission's words, "the exercise of journalistic supervision to assure fulfillment of its purpose."<sup>35</sup>

#### **B. The Absence of Journalistic Supervision Stamped the O'Brien Broadcast as Party-Oriented.**

The essential basis of the Commission's decision was not the partisan content of the O'Brien broadcast. Rather, the Commission relied on that factor and the non-responsiveness of the O'Brien broadcast to the paramount issues raised by recent Presidential addresses mainly to confirm that CBS had offered the time to DNC to use as it wished, free from any journalistic supervision which would have ensured that the broadcast was issue-oriented rather than party-oriented. It is this abandonment of journalistic supervision over a broadcast by a political spokesman which must give rise to reply rights.

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<sup>34</sup> *Id.* at 66.

<sup>35</sup> Memorandum Opinion and Order, August 18, 1970, A. 96.

The absence of journalistic supervision is one of the hallmarks of a party-oriented broadcast. Section 315 of the Communications Act of 1934 as amended (47 U.S.C. § 315), for example, specifically prohibits any licensee interference in broadcasts by candidates. Similarly, although not subject to Section 315, appearances in support of candidates such as the election-eve broadcasts by President Nixon and Senator Muskie are not supervised by licensees. Indeed, CBS has adopted a formal, hands off policy covering political broadcasts, a policy which perfectly describes its handling of the O'Brien broadcast:

"CBS places no limitations (except with respect to defamation and obscenity in non-315 appearances) on the use of paid political broadcast time. Paid political broadcasts may present material on any current local or national controversial issue—so long as the broadcast is on behalf of a candidate or a group of candidates. Because ballot propositions are so involved in the electoral process and indeed in the campaigns of many candidates we made a similar exception for them in our policies."<sup>36</sup>

In contrast to a political broadcast, the licensee is required to exercise substantial journalistic supervision in the course of carrying out its general fairness obligation to present contrasting views on controversial issues of public importance.

"The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view. In determining whether to honor specific requests for time, the station will inevitably be confronted

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<sup>36</sup> CBS Response to DNC Request for Declaratory Ruling, reprinted in Appendix to the Briefs, *Democratic National Committee v. F.C.C.*, D.C. Cir. No. 24,537 at 43. We do not understand CBS's policy to differ where the time provided is free.

with such questions as whether the subject is worth considering, whether the viewpoint of the requesting party has already received a sufficient amount of broadcast time, or whether there may not be more appropriate spokesmen for the particular point of view than the person making the request." *Report on Editorializing by Broadcast Licensees*, 13 F.C.C. 1246, 1251-52 (1949).

In a pleading filed with the Commission the same day as its telegraphic offer to Mr. O'Brien, CBS emphasized that it employed just such journalistic supervision in covering the discussion of public issues.

"... CBS has long maintained policies which in general provide that broadcasts dealing with current controversial issues be produced under the supervision and control of CBS News or a CBS Owned Station. Only by lodging these responsibilities with our own personnel can we effectively insure that objectivity and fairness will actually be achieved. . . . CBS has concluded that as a licensee in a medium with a finite amount of time to provide news, information and entertainment, we best serve the public by presenting issues and viewpoints within a balanced program schedule utilizing newsworthiness as the sole criterion."

\* \* \*

"The CBS policy of professional news responsibility does not, of course, mean that the actors in the events of the day are themselves prevented from speaking directly to the viewing public. The output of CBS News contains a high proportion of direct presentations of views by individuals—both on our regular 'hard' news programs and our news interview programs such as *FACE THE NATION*. Indeed, television news generally achieves proportionately more direct quotation from a news subject's own lips, and less paraphrasing in the words of reporters, than any other news medium.

"CBS provides a very substantial degree of direct exposure for partisans on controversial issues—always, however, through formats that are journalistically well suited to provide a full and fair elucidation of the issues. After President Nixon's April 30 address on Cambodia, CBS News broadcast on May 3 a special report, 'Where We Stand in Cambodia'. In addition to news reports from Cambodia and analyses of developments by CBS News correspondents, this broadcast also presented the comments of such national leaders as Secretary of State Rogers, retired General Maxwell Taylor, retired General James Gavin, and Senators Hugh Scott, Fred Harris, John Stennis, George Aiken, William Fulbright and Mark Hatfield. On May 9, 1970, CBS News presented a special, 'The Colleges, Cambodia, and the Confrontation in Washington', which included, among others, the views of Dr. Spock, Dr. Moos and Coretta King on the domestic reaction to the conflict in Cambodia.

\* \* \*

"Nonetheless, these direct appearances remain part of our own basic effort to inform fully and fairly; they are not permitted to become the instrument of partisan advocacy. The Report of The Twentieth Century Fund Commission on Campaign Costs in the Electronic Era, heavily relied on by the DNC, aptly describes the dangers in the political sphere of substituting partisan program control for professional news responsibility:

'Advances in broadcasting technology have made it possible to present a candidate in the best possible light, with all inept answers to hard questions edited out of the tape, with false starts and all uncertainties and human failings eliminated, all warts and blemishes removed, a single smooth image alone remaining. It is no criticism of television or radio to say that some day it may be possible to offer a wholly plausible and wholly false impression of a candidate. Broadcasting would become an impenetrable

shield for a candidate, would not open a window on him through which the public could see him clearly.' ”<sup>37</sup>

There is no way of reconciling the foregoing CBS statement to the Commission with what it actually did in the instant case.

CBS does not seriously argue that Mr. O'Brien's broadcast was comparable to the type of direct presentation of views described above. Pursuant to its quoted policy CBS, prior to this case, followed its traditional and correct procedure—it determined the issues to be discussed and then solicited views on those issues from various spokesmen. By so doing CBS could legitimately maintain that such direct appearances “are not permitted to become the instrument of partisan advocacy.” In the O'Brien broadcast, however, CBS did not start, as the Fairness Doctrine contemplates, with the issues to be discussed but first chose a spokesman and then neglected to ever specify any issues. In so doing, CBS permitted exactly that which it professed to abhor—the substitution of “partisan program control for professional news responsibility.”

CBS and DNC argue that the Commission could not conclude that the O'Brien broadcast was party-oriented on the basis of the fact that CBS failed to exercise journalistic supervision by not specifying the issues to be discussed on that broadcast. CBS, for example, states:

“Apparently, if CBS had prescribed in advance the very issues Mr. O'Brien actually discussed, the ‘orientation’ of the broadcast would somehow have been ‘issue-oriented’ instead of ‘party-oriented,’ and no reply-to-reply rights would have arisen.” Brief for Petitioner CBS at 22.

Here again, CBS has distorted the Commission's holding. Journalistic supervision begins with the designation

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<sup>37</sup> *Id.* at 37-38, 40-41.

of issues, it does not end there, and the Commission does not suggest that it does. Obviously, any licensee must also see to it that the person it selects is a responsible spokesman and actually does discuss the issues designated. For example, if CBS had offered to make available 25 minutes of time to DNC for the discussion of the Vietnam War in order to balance the network's previous coverage of that issue, we doubt that it would now claim the necessary balance had been achieved by the O'Brien broadcast which barely mentioned Vietnam. In the instant case, as discussed previously, the initial failure to designate issues obviated any necessity for the Commission to reach the question of subsequent supervision over the broadcast.<sup>38</sup>

The Commission also explained its reliance on the criterion of journalistic supervision by means of two analogies. These two hypothetical situations illuminate the rationale underlying the Commission's decision and demonstrate the appropriateness of the relief granted RNC.

First, the Commission posited a situation where, during the height of an election campaign, CBS gave DNC one-half hour in prime time to use as it wished and DNC used that time in an attempt to show that the administration had failed to resolve various important issues. In this situation the Commission points out that CBS would clearly not claim that it could deny RNC an opportunity to respond because CBS had already covered both sides of these issues in its general programming and had car-

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<sup>38</sup> Both Petitioners urge that the Commission's holding in this case will lead to censorship. The suggestion is ill-founded since the Commission has done no more here than require CBS to exercise the same journalistic supervision and judgment it has always professed to employ. Requiring spokesmen to address the issues chosen for discussion scarcely constitutes censorship. Moreover, the Commission has expressly held that such discussion may be "in the most partisan robust, wide-open fashion." Memorandum Opinion and Order, September 24, 1970, A. 304, 312.



ried Presidential speeches over the past 18 months.<sup>39</sup> DNC seeks to distinguish this example from the present case on the ground that the timing of the particular broadcast is critical. Brief for Petitioner DNC at 20. However, as the Commission noted, "electioneering is a continuing process"<sup>40</sup> and the fact that particular candidates have not been chosen does not preclude campaigning on behalf of a *party*. The O'Brien broadcast itself, with its emphasis on continued Democratic control of Congress and the explicit request for funds to assure election of Democratic candidates in the up-coming election, certainly justifies the Commission's conclusion.<sup>41</sup>

To further explain its holding, the Commission stated that a licensee would not meet its obligations under the Fairness Doctrine where it afforded time to one party to use as it wished but relegated the other party to short appearances on newscasts, even though this practice was halted several months before elections.<sup>42</sup> Indeed, it is self-

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<sup>39</sup> *Id.* at 308.

<sup>40</sup> *Id.* at 309.

<sup>41</sup> DNC's own analogy—that Presidential appearances one-half hour each week for 18 months to espouse the views of his administration would not be counterbalanced by a licensee's news-type programs but would occasion a right of reply by opposition spokesmen—is somewhat imprecise. We assume that the appearances would be for discussion of substantial public issues, not merely partisan exhortations. If so, a licensee could and should consider the format as well as the issues in achieving balance. Essentially, this is what was done by the Commission in another portion of the Opinion here appealed where it recognized that format *i.e.*, five prime-time addresses on the Vietnam War, an issue otherwise nearly balanced, would require an additional uninterrupted opportunity for discussion of the war by opposition spokesmen, A. 93. We do not perceive, however, any way in which DNC's analogy is pertinent to the instant situation where DNC was given time to use as it pleased.

<sup>42</sup> Memorandum Opinion and Order, Sept. 24, 1970, A. 303, 309. In a somewhat analogous situation, this Court recently expressly approved a statement by the Commission that a licensee should not create imbalance by covering one party's primary campaign but

[Footnote continued on page 30]

evident that even the most rudimentary concept of fairness requires these public media with their enormous impact to treat political parties equally.

CBS does not respond directly to the Commission's hypothetical situations. Instead, CBS attempts to fit the O'Brien broadcast into an entirely different legal mold, by suggesting that the political spokesman corollary can not appropriately be applied to either Presidential appearances, or to "*bona fide* replies to such Presidential appearances, such as the July 7 O'Brien Broadcast." Brief for Petitioner CBS at 28. We are in substantial agreement with the principle CBS enunciates but deny that the July 7 broadcast falls into the category of a "*bona fide*" reply. As we understand the Commission's decision, CBS could properly request any Democrat, including Chairman O'Brien whose party is hopelessly split on Vietnam, to speak on issues raised in previous broadcasts by the President provided it exercised normal journalistic supervision over the broadcast to ensure that it was, in fact, a discussion of the *issues selected* and not merely a partisan quasi-commercial. Where CBS exercises such journalistic supervision over the response to Presidential speeches neither RNC nor any other entity would be entitled to "two bites of the apple" or a "reply to a reply." But the O'Brien broadcast was not one where CBS exercised journalistic supervision over DNC's so-called reply. Rather, CBS gave the DNC complete freedom to do as it wished. In short, it was this unrestricted gift of time to one political party which occasioned a reply right for RNC.

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<sup>42</sup> [Continued]

not the general election campaign for the same office. *Kay v. FCC*, — U.S. App. D.C. —, — F.2d — (No. 24,495, Oct. 28, 1970), slip opinion at 20.

**V. THE COMMISSION'S HOLDING IS CONSISTENT WITH BOTH THE DEVELOPMENT OF THE FAIRNESS DOCTRINE AND THE COMMISSION'S PAST PRECEDENTS.**

In the instant case the Commission has applied the political spokesman corollary in a new factual situation. That, however, does not invalidate the Commission's ruling or make it irrational. The Fairness Doctrine has been reduced to hard and fast rules in only limited areas—Section 315 of the Communications Act, as amended, 47 U.S.C. § 315 (1964), together with the Commission's rules relating to the use of broadcast media by candidates for office and the rules relating to personal attacks and political editorials.<sup>43</sup> It is precisely because the Fairness Doctrine must be applied to a myriad of differing factual situations that its development has progressed by means of *ad hoc* decisions and policy clarifications dealing with a variety of specific factual situations.

Illustrative of this process was the Commission's decision in 1941 that editorializing by broadcast licensees was not in the public interest and its near failure to renew the license of a station carrying editorials. *Mayflower Broadcasting Co.*, 8 F.C.C. 333 (1941). By 1949, however, the Commission held a different view of the public interest. Its *Report on Editorializing by Broadcast Licensees*, 13 F.C.C. 1246 (1949), encouraged presentation of editorials provided contrasting views were also presented. In 1969 the fact that a station had failed to editorialize was a factor in the Commission's refusal to renew the station's license. *WHDH, Inc.*, 16 F.C.C. 2d 1 (1969), *rehearing denied*, 17 F.C.C. 2d 856 (1969), *affirmed sub nom. Greater Boston Television Corp. v. FCC*, — U.S.App. D.C. —, — F.2d —, No. 17,785, November 13, 1970.

<sup>43</sup> Similar provisions govern television, standard radio, FM radio and CATV: 47 C.F.R. §§ 73.120, 73.123, 73.290, 73.300, 73.590, 73.598, 73.657, 73.659, 74.1113 and 74.1115.

To assure fairness the Commission requires licensees to present contrasting views at their own expense where sponsorship is unavailable. *Cullman Broadcasting Co.*, 25 P. & F. Radio Reg. 895 (1963). Most recently the Fairness Doctrine has been extended to commercials. In *Banzhaf v. FCC*, 132 U.S.App. D.C. 14, 405 F.2d 1082 (1968), *cert. denied*, 396 U.S. 842 (1969), this Court upheld the Commission's declaration that carriage of cigarette commercials creates a duty in broadcasters to present antismoking messages. This concept was followed most recently when this Court suggested that carriage of advertising on behalf of a store might require coverage of the boycott activities of that store's striking employees. *Retail Store Employees Union, Local 880, et al v. FCC*, — U.S.App. D.C. —, — F.2d —, No. 22,605, October 27, 1970.

These examples illustrate the dynamic nature of the Fairness Doctrine and demonstrate the propriety of the Commission's proceeding on a case-by-case basis in applying broad concepts to new situations. This case, novel only in that it applies the political spokesman corollary to a broadcast by a party rather than one by a supporter of a particular candidate, is but the most recent manifestation of this dynamic policy.

Finally, both CBS and DNC urge that the Commission decision here is fatally inconsistent with a previous ruling, *Letter to Wayne L. Hays*,<sup>44</sup> where the Commission held that a response to President Johnson's State of the Union message by Republican spokesmen would not occasion reply rights for the Democrats. The *Hays* ruling is clearly distinguishable, of course, in that Republican spokesmen had been given time only to respond to the issues raised by the President's State of the Union address which had just been broadcast, not for any purpose they

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<sup>44</sup> Quoted in full in CBS's Petition for Reconsideration, A. 237-239.

might wish. While the topics were manifold, the response could not be construed, especially in the context of President Johnson's preceeding address, as an unrestricted gift of broadcast time. Moreover, similar time has been granted the Democrats to respond to President Nixon's State of the Union address without any suggestion by RNC that it must be afforded reply time. The case's only relevance here, as pointed out by the Commission, is its insistence that discussion of public issues under the Fairness Doctrine may be robustly partisan.

### CONCLUSION

All that the Commission has held in the decision here challenged is that a broadcaster may not turn his facilities over to one political party but deny comparable access to the other. And since the Commission has reasonably concluded that broadcast appearances by the President to discuss public issues are essentially non-political appearances, the only real question raised by this case is whether the O'Brien speech fell in the political spokesman area or was a bona fide reply to issues raised by the President. The distinctions relied on by the Commission in characterizing the O'Brien broadcast as party oriented are indisputably reasonable. The terms of the offer, the evident lack of journalistic supervision in the content of the program and the departure by CBS from its professed practices confirm that the O'Brien broadcast was indeed party—not issue—oriented.

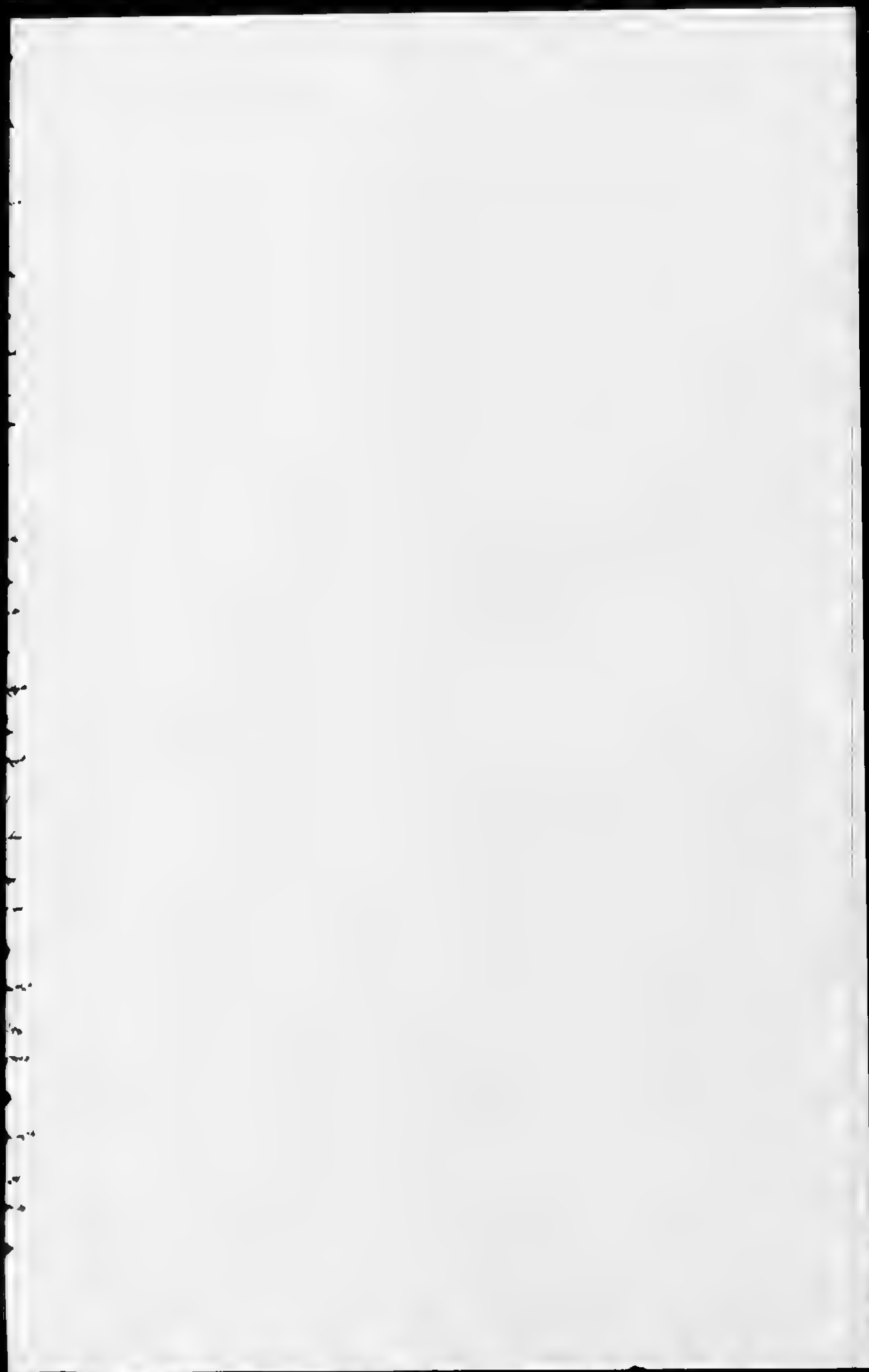
As noted at the outset, reversal of the Commission in this case would have ramifications far greater than the denial of reply time to RNC. To us it is inconceivable that the President's ability to communicate with the Nation on the critical issues facing us should be jeopardized by the presentation of purely partisan diatribes rather than a responsible reply on the issues raised by the President. The Commission's decision in this case removes this jeopardy.

For the foregoing reasons, the Commission's Orders should be affirmed.

Respectfully submitted,

W. THEODORE PIERSON  
JAMES J. FREEMAN  
PIERSON, BALL & DOWD  
1000 Ring Building  
Washington, D. C. 20036  
*Attorneys for Intervenor  
Republican National Committee*

March 1, 1971





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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,655

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COLUMBIA BROADCASTING SYSTEM, INC.,  
*Petitioner,*  
v.  
FEDERAL COMMUNICATIONS COMMISSION and  
UNITED STATES OF AMERICA,  
*Respondents,*  
DEMOCRATIC NATIONAL COMMITTEE,  
REPUBLICAN NATIONAL COMMITTEE,  
*Intervenors.*

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United States Court of Appeals  
for the District of Columbia Circuit

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No. 24,659

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FILED MAR 10 1971  
*Nathan J. Paulson*  
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On Petitions for Review of Orders of the  
Federal Communications Commission

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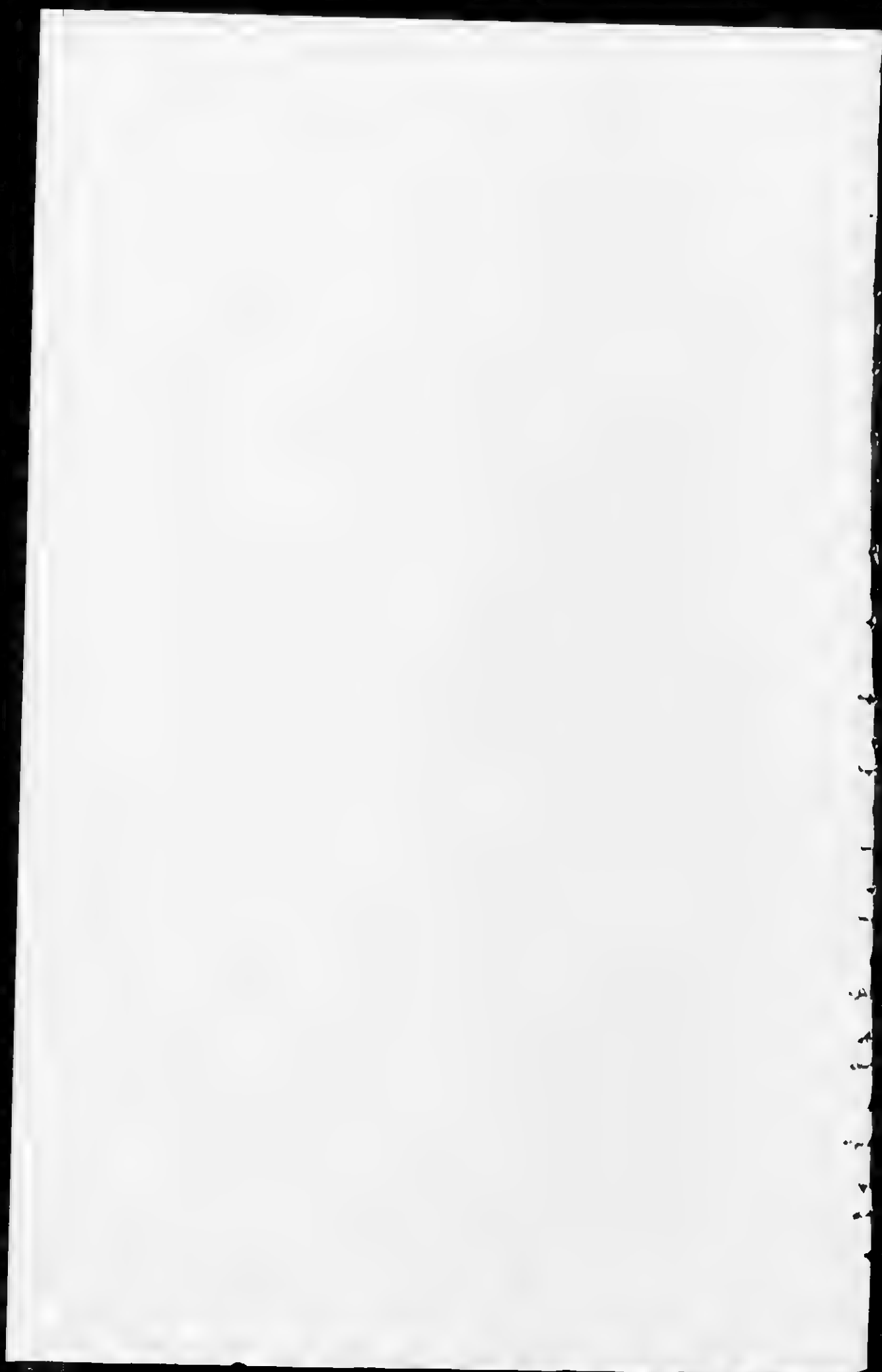
**REPLY BRIEF FOR PETITIONER  
COLUMBIA BROADCASTING SYSTEM, INC.**

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LLOYD N. CUTLER  
J. ROGER WOLLENBERG  
TIMOTHY B. DYK  
DANIEL MARCUS  
WILMER, CUTLER & PICKERING  
900 - 17th Street, N.W.  
Washington, D.C. 20006  
*Counsel for Columbia  
Broadcasting System, Inc.*

*Of Counsel:*

ROBERT V. EVANS  
RALPH E. GOLDBERG  
JOSEPH DEFRANCO  
51 West 52 Street  
New York, New York 10019



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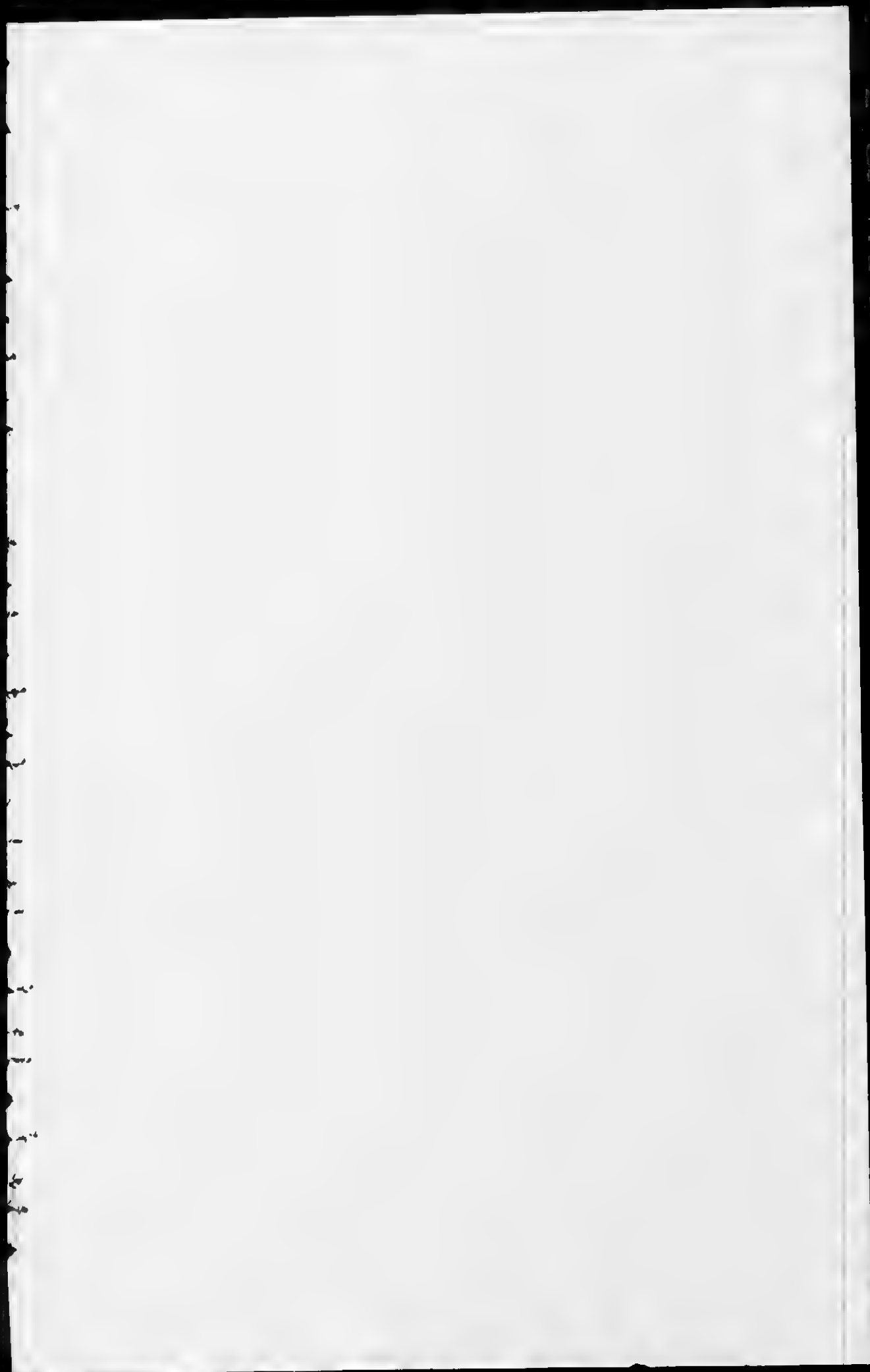
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On Petitions for Review of Orders of the  
Federal Communications Commission

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REPLY BRIEF FOR PETITIONER  
COLUMBIA BROADCASTING SYSTEM, INC.

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In attempting to salvage the Commission ruling under  
review, both the Commission and the Republican Na-



tional Committee (RNC) have continued in their briefs in this Court the process that the Commission began in its second opinion below—the process of advancing new explanations and justifications in an attempt to hit upon some rational basis for the Commission's decision. The latest attempts are based on the erroneous premise that the July 7 O'Brien broadcast was not really a response to prior Presidential broadcasts, but went beyond them.

Neither the Commission nor RNC has rebutted or even taken issue with the CBS showing<sup>1</sup> that it has fully and fairly covered all sides of the substantive issues discussed in the O'Brien broadcast, and that in so doing it has presented the views of the President as well as other Republican spokesmen on each such issue.<sup>2</sup> Neither the Commission nor RNC has come to grips with the fundamental unfairness of the ruling under review—that it requires CBS to give time to the President's party for yet another opportunity to present the Administration's views.

In our opening brief, we showed that there is no rational basis for applying the Commission's "political party" doctrine to responses to Presidential broadcasts that are themselves exempt from that doctrine.<sup>3</sup> Neither the Commission nor RNC has rebutted that showing or succeeded in demonstrating how the Commission's holding in this case can be reconciled with its earlier holding in the *Hays* case.<sup>4</sup>

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<sup>1</sup> CBS Br. 17-20. "CBS Br." references are to CBS' opening brief in this Court. "Gov't Br." references are to the Brief for Respondents, and "RNC Br." references are to the Brief for Intervenor Republican National Committee.

<sup>2</sup> Indeed, in its September 24 Opinion (¶ 11, A. 308), the Commission conceded that its ruling in this case "did not take into account the overall presentations of CBS on the issues covered in the July 7 DNC broadcast, and . . . did not follow the general fairness doctrine pattern."

<sup>3</sup> CBS Br. 26-29.

<sup>4</sup> *Letter to Hon. Wayne Hays*, Commission Ref. No. 8330-S; C2-105 (1968), reprinted at A. 237-39.

**I. Since the July 7 Broadcast Represented a Response to the President on Issues Discussed in Previous Presidential Broadcasts, the Commission's *Zapple* Ruling Cannot Rationally Be Applied to that Broadcast.**

As discussed in our opening brief,<sup>5</sup> the Commission's ruling in *Letter to Nicholas Zapple*, 23 F.C.C.2d 707 (1970)—that where a station sells time to a supporter of one candidate, it cannot refuse to sell time to supporters of his opponents—was a specific application of the fairness doctrine designed for an obvious and limited purpose. *Zapple* was fashioned to ensure that the spirit of the equal opportunities provisions of Section 315 of the Communications Act, 47 U.S.C. § 315, with respect to candidates is not frustrated by discrimination in the provision of time to their supporters. We pointed out that if Presidential appearances—except as a candidate or a supporter of candidates—are exempt from the *Zapple* ruling (as the Commission has quite correctly held), that ruling cannot fairly be applied to replies to exempt Presidential appearances. The result of any such application is not to achieve equality, but to impose an unequal requirement of double exposure favoring the President's party.

RNC explicitly concedes,<sup>6</sup> and the Commission appears to concede,<sup>7</sup> that the basic CBS argument as to the applicability of the *Zapple* ruling to Presidential broadcasts and replies to Presidential broadcasts is correct: *i.e.*, *Zapple* cannot rationally be applied to a broadcast by a spokesman for the political opposition to the President where the broadcast is a response to prior Presidential broadcasts. The central argument of both the Commission and RNC in this Court is, rather, that the July 7 broadcast did not in fact constitute a response to prior Presidential broadcasts and that *Zapple* therefore applies.

<sup>5</sup> CBS Br. 26-29.

<sup>6</sup> RNC Br. 30.

<sup>7</sup> Gov't Br. 16.

Thus, it is now urged not merely that CBS failed to specify the particular issues to be discussed, but that it failed to specify the *proper* issue or issues to be discussed, and that it failed to enforce on Mr. O'Brien its judgment in that respect. Accordingly, the July 7 broadcast is asserted to have been unresponsive to Presidential broadcasts, and therefore to have generated a Republican reply right under the *Zapple* or "political party" rule.

In pressing this argument, the Commission and RNC have seriously distorted the facts. The record demonstrates that the July 7 broadcast was in fact responsive to prior Presidential broadcasts.

First, it is clear that the offer of time to the Democratic National Committee (DNC) was—contrary to RNC's suggestion—related to prior Presidential broadcasts. By selective quoting from Dr. Stanton's telegram to Mr. O'Brien offering time to DNC,<sup>\*</sup> RNC attempts to convey the wholly incorrect impression that the telegram represented an absolute gift of time with no reference whatever to prior Presidential broadcasts or to the need for balancing Presidential appearances. In fact, a substantial portion of the telegram was devoted to a recognition of the need for balancing the frequent broadcast appearances of the President by a variety of methods, including the presentation, from time to time, of "Loyal Opposition" broadcasts by representatives of the principal opposition party. Such broadcasts are designed, in the words of the telegram, to afford, in part, an answer "to the problem of assuring fairness and balance in the treatment of public issues."<sup>°</sup> With respect to the specific offer of time to DNC, the telegram stated that the offer "is in keeping with longstanding CBS policy to achieve fairness and balance in the treatment of public issues,

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<sup>\*</sup> RNC Br. 3, 18.

<sup>°</sup> A. 21.

including the disparity between Presidential appearances and the opportunities available to the principal opposition party.”<sup>10</sup>

Second, the July 7 O'Brien broadcast, as we showed in our opening brief, did in fact respond on issues discussed in prior Presidential broadcasts. The July 7 broadcast was devoted entirely to the discussion of issues which the President, as well as other Republican Party spokesmen, had previously discussed in broadcast appearances. We submit that the format of the O'Brien broadcast—which involved the presentation of excerpts from prior Presidential broadcast appearances, each followed by Mr. O'Brien's reply—demonstrates that the broadcast was “responsive” to past Presidential statements.

Neither the Commission nor RNC has contradicted the fact that every issue discussed by Mr. O'Brien had previously been discussed in CBS broadcasts by the President.<sup>11</sup> Yet, the Commission continues to base its position on the false assumption that the only issue—or virtually the only issue—discussed in previous Presidential appearances was the Indochina War, and that CBS—if it really intended the July 7 broadcast to be a response to Presidential appearances—should have limited that broadcast entirely or almost entirely to the issue of the Indochina War. We submit that the Commission fell into error because of its focus on the other cases it was decided at the

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<sup>10</sup> A. 20.

<sup>11</sup> This being the case, the broadcast cannot be deemed unresponsive merely because Mr. O'Brien apportioned the time he devoted to those issues in a different way than the President had.

In this connection, it is interesting to note that in the 1970 response by Democratic Congressional leaders to President Nixon's State of the Union address—a broadcast that the Commission flatly states was “in fact responsive” to the President (Gov't Br. 20)—the Democrats placed a very different emphasis on the issues than had the President. Moreover, the Democrats dwelt extensively on urban problems and poverty, subjects hardly even adverted to in the President's address. 6 Weekly Compilation of Presidential Documents (hereafter “WCPD”) 58-66 (1970).

same time—all involving complaints arising out of Presidential broadcasts on the Indochina War.<sup>12</sup>

The plain fact is that Presidential appearances were not limited to the Indochina War. If one looks at the entire spectrum of broadcasts by President Nixon following his inauguration, or even during the more limited period arbitrarily selected by the Commission, it is clear that the Indochina War was only one of many issues discussed by the President, and that a broadcast could be “responsive” to those Presidential broadcasts without dealing entirely, mostly, or first with that particular issue.

The Commission states that in the eight months preceding the O'Brien broadcast—between November 3, 1969, and June 3, 1970—the President made six television speeches, five of which dealt with the Indochina War.<sup>13</sup> The Commission gives no reason, however, why it chose June 3, 1970, as the cutoff date. The O'Brien broadcast took place on July 7, and CBS offered the time for the broadcast on June 22. This being the case, the Commission cannot properly ignore a 22-minute broadcast by the President on June 17, 1970, which dealt not with Indochina, but with the economy generally and with inflation and unemployment specifically<sup>14</sup>—topics covered in the July 7 broadcast by Mr. O'Brien.

Similarly, the Commission gives no reason for choosing November 3, 1969, as the starting date for its analysis. The July 7 broadcast was, after all, the first “Loyal Op-

<sup>12</sup> This can be traced quite precisely. The initial assumption that the Presidential appearances to which Mr. O'Brien was supposed to respond were limited almost entirely to the Indochina War appears in ¶ 55 of the Commission's August 18 Opinion. A. 96. The paragraph refers back to an earlier part of the August 18 Opinion (¶ 37 n.22, A. 91) dealing with the complaints seeking time for response to Presidential broadcasts on the Indochina War.

<sup>13</sup> Gov't Br. 3.

<sup>14</sup> 6 WCPD 774 (1970); A. 150-57, 228, 244-45.

position"-type broadcast to be carried during the Nixon administration other than the response by Democratic Congressional leaders to the 1970 State of the Union address. President Nixon appeared on numerous occasions between his inauguration and November 3, 1969, and many of these appearances involved in whole or in part the discussion of issues other than the Indochina War.<sup>15</sup>

Nor does the Commission satisfactorily explain why other Presidential broadcast appearances during the eight-month period it chose to analyze—such as press conferences—should be ignored. The Commission does suggest, in a footnote to its brief,<sup>16</sup> that press conferences should not be taken into account, apparently because the Commission believes that they are not "voluntary, live, President-initiated appearances." The suggestion is not only plainly irrational, but is contrary to past Commission treatment of press conferences. In *Columbia Broadcasting System, Inc.*, 40 F.C.C. 395 (1964), the Commission held that since press conferences are substantially under the President's control, they are not exempt from Section 315 of the Act. It stated:

"Here not only the scheduling, but in significant part, the content and format of the press conference is not under the control of the network. Thus, the candidate determines what portion of the conference is to be devoted to announcements and when the conference is to be thrown open to questions."<sup>17</sup>

Under the Commission's own prior reasoning, therefore, press conferences clearly should be taken into account. Presidential press conferences broadcast over CBS dur-

<sup>15</sup> These appearances included discussion of the economy, crime, civil rights, urban problems, pollution and student dissent—all topics covered in the July 7 O'Brien broadcast. See A. 133, 138-39, 144-47, 159, 161-65, 167-78, 184, 186-89.

<sup>16</sup> Gov't Br. 3 n.1.

<sup>17</sup> 40 F.C.C. at 397. See also *McCarthy v. FCC*, 129 U.S. App. D.C. 56, 59 n.6, 390 F.2d 471, 474 n.6 (1968).

ing the eight-month period chosen by the Commission dealt substantially with issues other than the Indochina War, including economic policy, student dissent, crime, human resources and civil rights,<sup>18</sup> all subjects covered in Mr. O'Brien's "unresponsive" response.

In sum, the Commission has wholly failed to demonstrate that the O'Brien broadcast was not responsive to earlier Presidential broadcasts.

RNC suggests, however, that even if the O'Brien broadcast was responsive on the issues discussed in the preceding Presidential broadcasts, it was not a *bona fide* "response" to the President because of its "partisan" tone. RNC asserts here, as it did before the Commission, that the July 7 broadcast "contained no significant discussion of the issues or of their solution, but was an attack on the President and his party."<sup>19</sup> CBS, complains RNC, "'permitted DNC to use the time for any purpose, including mere partisan advocacy and party propaganda.'" <sup>20</sup> Indeed, RNC goes so far as to analogize the O'Brien broadcast to program-length commercials that the Commission has held to be inconsistent with the public interest.<sup>21</sup> Finally, RNC urges that if such partisan re-

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<sup>18</sup> See 5 WCPD 1720-26 (1969); 6 WCPD 92-96, 616-21 (1970); A. 148, 149, 158, 165, 166, 179, 189-91, 243-46.

<sup>19</sup> RNC Br. 4.

<sup>20</sup> *Ibid.*

<sup>21</sup> RNC Br. 21-22. In this connection, RNC continues to point to the short fund solicitation that followed the July 7 broadcast on some CBS stations as further proof of the broadcast's "party-orientation." The Commission, too, seems to give weight to the broadcast of the fund solicitation as support for its holding that the July 7 broadcast was not a *bona fide* response to the President. Gov't Br. 8: September 24 Opinion. ¶ 24 n.15, A. 311. We point out again that the fund solicitation was a matter entirely separate from the O'Brien broadcast; that it was carried on only a few CBS-affiliated stations and was not broadcast over the CBS Television Network; and that the time for the solicitation was sold by CBS-owned stations pursuant to a recently announced CBS policy of willingness to sell time for such solicitations to all political parties.



sponses to the President went unanswered by his party, the President would be deterred from making broadcast appearances in the future, and thus from carrying out the responsibilities of his office:

“[U]nless the Commission’s Order is upheld, CBS’s avowed policy to continue these broadcasts will inhibit the use of broadcast media by the President and other elected officials who make frequent ‘Reports to the People,’ with a resultant diminution of communication between our elected leaders and the nation . . . .”<sup>22</sup>

RNC’s argument has been rejected by the Commission, which specifically declined to judge the O’Brien broadcast on the basis of its supposed partisan tone, and indeed conceded that the presentation of partisan debate serves the public interest.<sup>23</sup> To hold otherwise would be to transgress the First Amendment. Partisan discussion is at the heart of the First Amendment, which embodies the nation’s commitment to vigorous and even caustic public criticism. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Contrary to RNC’s suggestion, the public interest is not served by the elimination of such partisan debate—by either political party.

Nor is the suppression of partisan debate necessary to protect the President’s right and duty to communicate with the American public. It is surely fanciful to suggest that the President will be inhibited by the broadcast of partisan responses. Indeed, it is not the presentation of replies to Presidential broadcasts that threatens to inhibit robust political debate; it is the Commission

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A. 36; CBS Br. 5. This policy was subsequently endorsed by the Commission. *Democratic National Committee*, 25 F.C.C.2d 216, 228-30 (1970), *petition for review on other grounds pending*, D.C. Cir. No. 24,537. Under that policy, RNC has been entitled at all times since the July 7 broadcast to purchase fund solicitation spots comparable to those purchased by DNC.

<sup>22</sup> RNC Br. 9.

<sup>23</sup> September 24 Opinion, ¶ 22, A. 311-12; Gov’t Br. 8, 19-20.

order in the present case that, if it is permitted to stand, threatens this result. As the RNC statement quoted above plainly implies, the result of the Commission's order may be to deter licensees from presenting broadcasts of the type involved here. Under the order, such broadcasts will trigger a right to reply for the President's party, and thus merely recreate the imbalance they are intended to correct. Hence, there will be little purpose to presenting such broadcasts in the first instance.

## II. The Commission's Ruling in this Case Is Irreconcilable with its Earlier *Hays* Ruling.

In 1968 the Commission ruled that a broadcast by Republican Congressional leaders in response to President Johnson's State of the Union address did not give rise to any reply-to-reply rights for a Democratic Party spokesman. *Letter to Hon. Wayne Hays*, Commission Ref. No. 8330-S; C2-105 (1968). Before the Commission, RNC conceded that the *Hays* ruling was squarely in point, but argued that subsequent developments made clear that it had been incorrectly decided and would be decided differently today.<sup>24</sup> In its September 24 Opinion, on the other hand, the Commission made clear that *Hays* was still good law, although the Commission failed to indicate any basis on which that decision could be reconciled with the decision under review here.<sup>25</sup>

Now, before this Court, both RNC and the Commission are finally forced to come to grips with the problem of reconciling *Hays* with the Commission's decision in this case. The distinctions between *Hays* and the case at bar advanced by RNC and the Commission are completely inconsistent. Neither can withstand scrutiny.

<sup>24</sup> A. 274.

<sup>25</sup> September 24 Opinion, ¶ 23 n.16, A. 312. See CBS Br. 14-15, 23-24.

RNC, which has previously chosen to admit that *Hays* was directly in point but had been overruled *sub silentio*, now argues that the *Hays* ruling is "clearly distinguishable, of course, in that Republican spokesmen had been given time only to respond to the issues raised by the President's State of the Union address which had just been broadcast, not for any purpose they might wish."<sup>26</sup> On the other hand, the July 7 broadcast at issue here, according to RNC, represented "an unrestricted gift of broadcast time."<sup>27</sup> In short, RNC argues that the issues were adequately specified in *Hays*, but not in the case at bar.

We showed in our opening brief that the "specification of issues" rationale of the Commission provides no basis for distinguishing *Hays*.<sup>28</sup> There was no actual specification of issues in the *Hays* case. Since the Republican Congressional leaders in the *Hays* case were invited to present their views on the State of the Union—a concept encompassing all national issues of importance—they were, in effect, invited to speak on any issue they chose. As a review of their broadcast<sup>29</sup> will indicate, they chose to treat a range of issues at least as broad, if not broader, than the range of issues covered in the O'Brien broadcast.

The Commission has gone far toward abandoning the "specification of issues" rationale before this Court. Undoubtedly recognizing the weakness of this distinction, the Commission apparently concedes that the issues to be discussed are not "specified" by CBS or the other networks when they invite responses to Presidential State of the Union addresses. Thus, in discussing the Democratic

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<sup>26</sup> RNC Br. 32-33.

<sup>27</sup> RNC Br. 33.

<sup>28</sup> CBS Br. 23-26.

<sup>29</sup> 114 CONG. REC. 882 (1968), reproduced at A. 266-69.

response to President Nixon's 1970 State of the Union address, the Commission states: "The response was partisan and the networks may well have not specified the issues to be covered, but the key is that the program was in fact responsive to the President's speech on the issues."<sup>30</sup> The Commission distinguishes *Hays*, as it distinguishes the Democrats' response to President Nixon's 1970 State of the Union address, solely on the ground that those broadcasts were in fact "responsive" to Presidential appearances, while the O'Brien broadcast at issue here was not. Nothing in the *Hays* ruling, however, suggests that the "responsiveness" of the broadcast had anything to do with the decision. In any event, as we have shown in Part I above, the O'Brien broadcast was in fact "responsive," and this case therefore cannot be distinguished from *Hays* on that ground.

Thus, the Commission has declined to overrule, and has failed to distinguish on any rational basis, a prior decision squarely in point. For this reason alone, under the authorities cited in our opening brief,<sup>31</sup> its decision in this case must be reversed.

### CONCLUSION

The Commission has ruled that the presentation of a single 25-minute broadcast by the Chairman of DNC on issues previously discussed by the President in numerous broadcast appearances gives rise to reply-to-reply rights for a Republican spokesman. This result is arbitrary, capricious and without rational foundation. Thus, if this were an ordinary case involving economic regulation by an administrative agency, the agency's decision could not stand. Still more stringent standards apply when an agency issues rulings affecting freedom of speech

<sup>30</sup> Gov't Br. 20.

<sup>31</sup> CBS Br. 25-26.

and press. If the Commission is allowed a "free hand to vindicate its own idiosyncratic conception of the public interest or of the requirements of free speech," serious First Amendment questions would be raised. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 395 (1969).

For the reasons set forth above and in our opening brief, the orders of the Commission under review should be set aside.

Respectfully submitted,

LLOYD N. CUTLER  
J. ROGER WOLLENBERG  
TIMOTHY B. DYK  
DANIEL MARCUS  
WILMER, CUTLER & PICKERING  
900 - 17th Street, N. W.  
Washington, D. C. 20006  
*Counsel for Columbia  
Broadcasting System, Inc.*

*Of Counsel:*

ROBERT V. EVANS  
RALPH E. GOLDBERG  
JOSEPH DEFRANCO  
51 West 52 Street  
New York, New York 10019

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